

1 IN THE COUNTY OF WASHINGTON

2
3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY
4 VIRGINIA GAS AND OIL BOARD
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8 July 15, 2005
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12 APPEARANCES:

13 **BOARD MEMBERS:**

14 MASON BRENT - OIL & GAS REPRESENTATIVE
15 BILL HARRIS - PUBLIC MEMBER
16 JAMES MCINYRE - PUBLIC MEMBER
17 DONALD RATLIFF - COAL REPRESENTATIVE

18 **CHAIRMAN:**

19 BENNY WAMPLER - DEPUTY DIRECTOR OF THE DMME AND CHAIRMAN

20 **COUNSEL:**

21 SHARON PIGEON - ASSISTANT ATTORNEY GENERAL
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26 BOB WILSON - DIRECTOR OF THE DIVISION OF GAS & OIL AND
27 PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD
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*Approve minutes			122
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1 BENNY WAMPLER: Good Morning. My name is Benny
2 Wampler. I'm deputy director for the Department of Mines,
3 Minerals and Energy, and Chairman of the Gas and Oil Board;
4 and I'll ask the Board members to introduce themselves,
5 starting with Mr. Brent.

6 MASON BRENT: My name is Mason Brent and I'm from
7 Heathsville, Virginia, and I represent the Gas and Oil
8 industry.

9 BILL HARRIS: I'm Bill Harris from Big Stone Gap. I
10 represent the citizens of Wise County.

11 SHARON PIGEON: I'm Sharon Pigeon. I'm with the
12 office of The Attorney General.

13 DONALD RATLIFF: I'm Donald Ratliff, from Wise
14 County representing the coal industry.

15 JIM MCINTYRE: I'm Jim McIntyre of Wise, Virginia, a
16 citizen appointee.

17 BOB WILSON: I'm Bob Wilson. I'm director of the
18 Division of Gas and Oil, and principal director to the staff
19 of the Board.

20 BENNY WAMPLER: The first item on today's agenda,
21 the Board received a report on the Board escrow account as
22 administered by Wachovia Bank, the escrow agent for the
23 Board. Mr. Wilson, do you want to discuss the document you
24

1 passed out?

2 BOB WILSON: Yes, sir. This is our regular
3 quarterly report for the second quarter, calendar year 2005.
4 Our opening balance was \$10,836,613.95. We received
5 deposits during the quarter totaling \$722,361.02, and
6 received interest payments totaling \$70,109.31. During the
7 quarter, disbursements totaling \$7,898.77 were made, which
8 leaves a closing a balance of \$11,621,185.51. Once more, I
9 call your attention to the fact that they include in the
10 accounting here the running \$15,000 service fee. That has
11 not been debited during this quarter. I think they'll get at
12 that during the next quarter, or half of that amount. Our
13 interest rate for the last month of this quarter has leveled
14 off at 2.86%, which is almost exactly two points higher than
15 our low point not too long ago, so it's looking considerably
16 better right now.

17 Attached to the regular reporting that you have
18 there is an accounting of the disbursements that were made
19 during the first half of the year, and as you can see from
20 this a total of \$40,088.39 were paid out to folks who had
21 come before the Board and received disbursement orders.
22 That's all I have.

23 BENNY WAMPLER: Questions from members of the Board?

24

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1 MASON BRENT: Question here.

2 BENNY WAMPLER: Mr. Brent.

3 MASON BRENT: On your attachment, it's titled for
4 the period of January 1 through June 30, but it looks like
5 the last disbursement was in March?

6 BOB WILSON: Yes, sir.

7 MASON BRENT: So has there been no activity in...
8 well, on the first page you show activity in April but it's
9 not included on this second page?

10 BOB WILSON: That...I think that is an artifact of
11 when they do their accounting. The entire amount presumably
12 that was taken out during March ended up on the April
13 accounting. I...I would make that assumption. I can find
14 out if that's correct, but that would be the assumption I'd
15 make. They... we have several different forms of reporting
16 that they do include in these and they use their regular
17 accounting methods and statement methods which often means
18 that transactions had taken place in one month only end up in
19 one of the statement...the official statement for the next
20 month, and I suspect that is the case here but that would be
21 supposition.

22 BENNY WAMPLER: Other questions?

23 (No audible response).

24

1 BENNY WAMPLER: Mr. Wilson, would you talk with the
2 Bank and ask them about that---?

3 BOB WILSON: Yes, sir, I sure will.

4 BENNY WAMPLER: The next Board meeting, I might do
5 a follow up.

6 BOB WILSON: Sure will.

7 BENNY WAMPLER: Other questions from members of the
8 Board?

9 (No audible response).

10 BENNY WAMPLER: The next item on the agenda is a
11 petition from CNX Gas Company, LLC for pooling of coalbed
12 methane unit BE-110, Docket number VGOB-05-0621-1460. We'd
13 ask the parties that wish to address the Board in this matter
14 to come forward at this time.

15 MARK SWARTZ: Mark Swartz and Les Arrington. Mr.
16 Chairman, the items two through nine are all Middle Ridge
17 units. Items two through seven all involve Mr. Ghent who
18 maybe you all remember is somebody who is agreeable to being
19 pooled and very few others. I would propose if there's not
20 an objection, that you put items two through seven together.
21 There's a...there's some revisions to one of the...one of
22 the docket items eight and nine. There are some other people
23 in those. Since I can maybe put those two together, eight
24

1 and nine, but the first two through seven might make sense to
2 combine and save us a little bit of time.

3 BENNY WAMPLER: Any objection to doing that, members
4 of the Board?

5 (No audible response).

6 BENNY WAMPLER: I'll go ahead and call the other
7 agenda items that's in petition for CNX Gas Company, LLC for
8 pooling of coal bed methane unit BF-110, docket number VGOB-
9 05-0621-1461; BG-109, docket number VGOB-05-0621-1462; BG-
10 110, docket number ending in 1463; BH-109, docket number
11 ending in 1464; and BH-110, docket number ending in 1465.
12 We'd ask the parties that wish to address the Board in these
13 matters to come forward at this time.

14 MARK SWARTZ: Okay. We'll also be...on behalf of
15 the applicant, Les Arrington and Mark Swartz.

16 BENNY WAMPLER: Okay. Let the record show there are
17 no others. You may proceed.

18

19 LESLIE K. ARRINGTON
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. SWARTZ:

24

--

1 Q. You need to state your name for us.
2 A. Leslie K. Arrington.
3 Q. Who do you work for?
4 A. CNX Gas Company.
5 Q. What do you do for them?
6 A. Manager of Environmental permitting.
7 Q. Okay. With regard to these...these pooling
8 items that the Chairman has just called, were you either the
9 person that prepared the notices and applications and related
10 exhibits, or the person who...who supervised the people that
11 did the work?
12 A. Yes, I was.
13 Q. one or the other?
14 A. Yes.
15 Q. Okay. And did you in fact sign personally
16 all the notices and the...and the applications?
17 A. Yes.
18 Q. And then there are exhibit C's included
19 which are well cost estimates, correct?
20 A. Yes, it is.
21 Q. Did you prepare those and sign them?
22 A. Yes.
23 Q. Okay. What did you do to notify people that
24

1 there would be a hearing today?

2 A. We mailed by certified mail, return receipt
3 requested for all those items on May 20, 2005, and each one
4 of the was published in the Bluefield Daily Telegraph. BE-
5 110 was published in the Bluefield Daily Telegraph on May 26,
6 2005. BF-110, May 26, 2005. BG-105 was May 27, 2005.

7 Q. Wait a minute. There's...is there a 105?

8 A. BG-109, I'm sorry.

9 Q. Okay. Was published when?

10 A. May 27, 2005. BG-110, May 27, 2005. BH-
11 109, May 28, 2005. And BH-110, May 28, 2005.

12 Q. And have you filed your proofs with regard
13 to mailing and with regard to publication with Mr. Wilson?

14 A. Yes, we have.

15 Q. Do you want to add any respondents to any of
16 these six units?

17 A. No.

18 Q. Do you want to dismiss anybody from the six?

19 A. No.

20 Q. Okay. Who's the applicant in every
21 instance?

22 A. CNX Gas Company, LLC.

23 Q. And is CNX Gas Company, LLC a Virginia
24

1 General partnership?

2 A. Ye...yes, it is.

3 Q. Is it a wholly owned indirect subsidiary

4 Consol Energy, Inc?

5 A. Yes, it is.

6 Q. Is CNX Gas Company authorized to do business

7 in the Commonwealth?

8 A. Yes, it is.

9 Q. In each of these six applications, there's a

10 request that someone be appointed designated operator,

11 correct?

12 A. Yes, it is.

13 Q. And who is that?

14 A. CNX Gas.

15 Q. And in that regard, is CNX Gas Company

16 registered with the Department of Mines, Minerals and Energy?

17 A. Yes, it is.

18 Q. And does it have a blanket bond on file?

19 A. Yes.

20 Q. Okay. Are all six of these units frac

21 units?

22 A. Yes, sir, they are.

23 Q. Do they all propose to drill one well?

24

1 A. Yes, they do.

2 Q. In all six of these instances...let me check
3 my notes here...in all six of these instances the...is...
4 well, I'm not sure---?

5 A. All of these are 58.74 acres.

6 Q. Okay. And in...in all of these, is the
7 proposed well in the drilling window?

8 A. No.

9 Q. Okay.

10 A. Well, yes, they are.

11 Q. It's docket item eight?

12 A. Right.

13 Q. So these docket items two through seven, the
14 one well, is that located in the drilling window?

15 A. Yes.

16 Q. Okay. And in all instances, we're talking
17 about 58.74 acres?

18 A. Correct.

19 Q. And what...what...what field rules?

20 A. Middle Ridge.

21 Q. Okay. Is Mr. Ghent involved in all of
22 these?

23 A. Yes, he is.

24

1 Q. Remind the Board about him and his
2 preference.

3 A. He has indicated to us that he is going to
4 elect to participate either by carry or participation.

5 Q. Okay. And he has also indicated that he has
6 no objection to being pooled?

7 A. That's correct, he has.

8 Q. Okay. With regard to the outstanding
9 interest, the people that you're seeking to pool here, Mr.
10 Ghent and a few other folks, what are the lease terms that
11 you've offered to them and to the people that...that you've
12 been able to lease?

13 A. Our standard coal bed methane lease is a
14 dollar per acre per year with a five year paid up term, with
15 a one-eighth production royalty.

16 Q. Okay. And...and would you continue to be
17 willing to do that...that sort of lease with the folks whose
18 interest are outstanding?

19 A. Yes, we will.

20 Q. And would you recommend that those be the
21 terms of any people...of any lease that is deemed to occur by
22 reason of election or failure to elect in a Board order?

23 A. Yes, we would.

24

--

1 Q. Okay. Is it...is it your opinion that the
2 development plan for each of these six units, which is to
3 drill one frac well in the drilling window to produce the
4 coal bed methane, is a reasonable plan to develop the
5 resource?

6 A. Yes, it is.

7 Q. And is it your opinion that if you take the
8 leasing and acquisition efforts that the applicant has been
9 able to accomplish and you combine that with a pooling order,
10 that those two things would protect the correlative rights of
11 all owners and claimants?

12 A. Yes, it would.

13 Q. Okay. Now taking these one at a time and
14 kind of going through them specifically, let's start
15 with...with BE-110, okay?

16 A. Yes.

17 Q. What is...what is your well cost estimate
18 here?

19 A. BE-110 is \$253,248.63 to a depth of 2,912.
20 Permit number is 6696 and its not drilled.

21 Q. Okay. And what are you seek...what is the
22 interest that you are seeking to pool here?

23 A. We're seeking to pool 20.9624 percent of the
24

1 coal, oil and gas owners coalbed methane interest.

2 Q. Okay. And that means then that you've been
3 able to acquire, either by lease or otherwise, what percent?

4 A. 79.0376 percent.

5 Q. And in this unit there's no escrow
6 acquired---?

7 A. No.

8 Q. ---correct? Turning to BF-110, what's the
9 well cost estimate there?

10 A. \$252,588.95, to a depth of 2,895. Permit
11 number is 6702 and it's been drilled.

12 Q. And...and in this, what are you seeking...what
13 interests are you seeking to pool?

14 A. We've leased or own 93.0523 percent of the
15 coal, oil and gas interest, CBM interest. We're seeking to
16 pool 6.9477 percent of the coal, oil and gas CBM interest.

17 Q. Okay. And in BF-110, there's no escrow
18 acquired---?

19 A. No.

20 Q. ---is that correct?

21 A. That's right.

22 Q. Turning to BG-109, what's your well cost
23 estimate?

24

1 A. \$252,571.53, to a depth of 2,962. Permit
2 number is 6716. It's...it is not drilled.

3 Q. What are you seeking to pool?

4 A. We have 89.832 percent of the coal, oil and
5 gas owners' claim to coal bed methane. We're seeking to pool
6 10.168 percent of the coal, oil and gas CBM interest.

7 Q. And again, with regard to BG-109, there's no
8 escrow acquired?

9 A. No.

10 Q . Turning to BG-110, what's your well cost
11 estimate?

12 A. \$250,935.90. Depth is 2,850. Permit number
13 is 6724. The well has been drilled.

14 Q. Okay. And...and here we've got some
15 slightly different alignment of percentages between the coal,
16 oil and gas. What...what are you seeking to pool on the coal
17 side?

18 A. We have leased 94.0236 percent of the coal
19 owners claim to coal bed methane, 93.1686 percent of the oil
20 and gas owners' claim to coal bed methane. We're seeking to
21 pool 5.9764 percent of the coal owners' claim to coal bed
22 methane, and 6.8314 percent of the oil and gas owners' claim
23 to coal bed methane.

24

--

1 Q. Again, with regard to BG-110, there's no
2 escrow acquired?

3 A. No.

4 Q. Turning to BH-109, what's the well cost
5 estimate?

6 A. \$254,199.45 to a depth of 2,930. Permit
7 number is 6703. The well has not been drilled.

8 Q. Okay. Tell us what you've acquired and what
9 you're seeking to pool?

10 A. We have acquired 93.5944 percent of the coal
11 owners' claim to coal bed methane. And 92.3497 percent of
12 the oil and gas owners' claim to coal bed methane. We're
13 seeking to pool 6.4056 percent of the coal owners' claim to
14 coal bed methane, and 7.6503 percent of the oil and gas
15 owners' claim to coal bed methane.

16 Q. Again, no escrow was acquired here?

17 A. Correct.

18 Q. Okay. And the last one of these six units
19 that we're going to be talking about in this group, what's
20 your well cost estimate for BH-110?

21 A. \$245,670.21. Depth is 2,704. Permit number
22 is 6695. And it has not been drilled.

23 Q. Okay. What have you acquired and what are
24

1 you seeking to pool?

2 A. We have acquired 99.2124 percent of the coal
3 owners' claim to coal bed methane, 94.0767 percent of the oil
4 and gas owners' claim to coal bed methane. Seeking to pool
5 0.7876 percent of the coal owners' claim to coal bed methane.
6 And 5.9233 percent of the oil and gas owners' claim to coal
7 bed methane.

8 Q. And once again with regard to this
9 particular unit, BH-110, there's no escrow acquired?

10 A. No.

11 MARK SWARTZ: That's all I have, Mr. Chairman.

12 BENNY WAMPLER: What's your estimated reserves from
13 each one of these?

14 A. I believe it's 300. I'd have to look. 125
15 to 550 mcf.

16 BENNY WAMPLER: I saw yesterday that Consol was
17 spinning off CNX Gas Company. My...my term but something...
18 somewhere in that lingo. Has that occurred?

19 A. No, not effective yet.

20 BENNY WAMPLER: Okay. Questions from mem---?

21 MARK SWARTZ: Between now and next month, however,
22 it will be. You may be hearing about it next month.

23 BENNY WAMPLER: Okay. I was just making sure we
24

1 weren't effective yet. Questions from members of the Board?
2 (No audible response).
3 MARK SWARTZ: They make us change every year or so,
4 right?
5 BENNY WAMPLER: Is there any questions? Do you have
6 anything further?
7 MARK SWARTZ: Not with regard to these units.
8 BENNY WAMPLER: Is there a motion?
9 JIM MCINTYRE: Motion to approve.
10 DONALD RATLIFF: Second.
11 BENNY WAMPLER: Okay. Motion and second, is there
12 any further discussion?
13 (No audible response).
14 BENNY WAMPLER: All in favor, signify by saying yes.
15 (All members signify by saying yes).
16 BENNY WAMPLER: Opposed, say no.
17 (No audible response).
18 BENNY WAMPLER: You have approval. The next item on
19 the agenda is a petition from CNX Gas Company, LLC for
20 pooling of coal bed methane unit BB-122, docket number VGOB-
21 05-0719-1475. We'd ask the parties that wish to address the
22 Board in these matters to come forward.
23 MARK SWARTZ: Mark Swartz and Les Arrington.
24
25

1 BENNY WAMPLER: The record will show no others. You
2 may proceed.

3 MARK SWARTZ: Mr. Chairman, I would...I would ask
4 that we...I be allowed to incorporate Mr. Arrington's
5 testimony with regard to his opinion testimony concerning the
6 development plan and the correlative rights, his testimony
7 with regard to the standard lease terms from the prior
8 testimony into this record, as well as his testimony with
9 regard to the applicant and operator.

10 BENNY WAMPLER: That will be incorporated.

11 MARK SWARTZ: Thank you.

12 LESLIE K. ARRINGTON

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. SWARTZ:

15 Q. Mr. Arrington, you need to state your name
16 again.

17 A. Leslie K. Arrington.

18 Q. And I've just reminded you you're still
19 under oath?

20 A. Yes.

21 Q. Okay. Who do you work for?

22 A. CNX Gas.

23 Q. And what do you do for them?

24

--

1 A. I'm manager of environmental permitting.

2 Q. okay. And did you either prepare or have

3 prepared under your direction the notice of hearing and

4 application and related exhibits for BB-122?

5 A. Yes, I did.

6 Q. Okay. And did you sign both the notice of

7 hearing and the application?

8 A. Yes, I did.

9 Q. What did you do to tell people that there

10 would be a hearing today?

11 A. We mailed by certified mail, return receipt

12 requested on June 17, 2005, and published in the Bluefield

13 Daily Telegraph on June 17, 2005.

14 Q. And...and have you provided Mr. Wilson with

15 copies of your proofs of mailing and proofs of publication?

16 A. Yes, we have.

17 Q. Do you want to add anybody as an additional

18 respondent in BB-122?

19 A. No.

20 Q. Do you want to dismiss anybody?

21 A. No.

22 Q. Okay. This is a Middle Ridge unit?

23 A. Yes, it is.

24

1 Q. What's the plan here for development?
2 A. One well.
3 Q. One frac well?
4 A. Yes.
5 Q. Okay. And is that located inside or outside
6 the window?
7 A. It's outside the drilling window.
8 Q. Okay. And...and directing the Board and
9 your attention to the plat, if you could give us a feel for
10 why it's...it's located where it is?
11 A. It's actually up on a strip bench. It's
12 reason it's...it's there, trying to stay away from the
13 dwellings.
14 Q. There's a lot of houses----?
15 A. Yes.
16 Q. --up in the...the northern half of the unit?
17 A. Yes, it is.
18 Q. Okay. And the...and the actual location was
19 a pre-existing strip bench---?
20 A. Yes.
21 Q. ---you didn't have to do any additional---?
22 A. Right.
23 Q. ---surface disturbance?
24

1 A. Right.

2 Q. Okay. Have you provided a well cost

3 estimate?

4 A. Yes, we have.

5 Q. And what's that estimate?

6 A. \$242,982.21, to a depth of 2,526, and

7 there's no permit issued for this well yet.

8 Q. Okay. What have you been able to acquire

9 and what are you seeking to acquire?

10 A. We've acquired 91.5069 percent of the coal

11 owners' claim to coal bed methane. We're seeking to pool

12 70...I'm sorry, we have 78.7388 percent of the oil and gas

13 owners' claim to coal bed methane; seeking to pool 8.4931

14 percent of the coal owners' claim to coal bed methane, and

15 21.2612 percent of the oil and gas owners' claim to coal bed

16 methane.

17 Q. okay. And once again, this is a unit in

18 what field rules?

19 A. Middle Ridge.

20 Q. And it's the...the acreage is what?

21 A. 58.74.

22 Q. Same as what we've been saying?

23 A. Yes.

24

1 Q. Okay. Is there an escrow acquired?
2 A. Yes, it is.
3 Q. Okay. So for conflicts, what are the tracts
4 that need to be escrowed?
5 A. 2-A, 2-B, 2-D, 2-E, 2-F, 6-A and 6-B.
6 Q. okay. And other than the conflicts escrow,
7 there is no other escrow requirement?
8 A. That's correct.
9 Q. And there are no split agreements?
10 A. I guess not.
11 Q. At least as far as we can tell there is no
12 EE?
13 A. Right.
14 MARK SWARTZ: Okay. That would be it for this one,
15 Mr. Chairman.
16 BENNY WAMPLER: Questions from members of the Board?
17 BILL HARRIS: Mr. Chairman---.
18 BENNY WAMPLER: Mr. Harris?
19 BILL HARRIS: Mr. Arrington, just one question about
20 the location again. If you'll look at the plat, I know we've
21 looked at the BB-122 well down at the lower left corner and
22 I...and I know you've testified that there's a strip bench
23 there. What about the other side of the creek there, 7-C, 7-
24

1 A, somewhere in there, that looks devoid of structures. Was
2 there---?

3 LESLIE ARRINGTON: Well, we've just attempted to use
4 what the environment gave us and this location was kind of
5 pre-built for us, you know, strip bench. That's the reason
6 we used it, yeah.

7 BILL HARRIS: Thank you.

8 BENNY WAMPLER: Other questions from members of the
9 Board?

10 (No audible response).

11 BENNY WAMPLER: Do you have anything further?

12 MARK SWARTZ: No.

13 BENNY WAMPLER: Is there a motion?

14 JIM MCINTYRE: Motion to approve.

15 BILL HARRIS: Second.

16 BENNY WAMPLER: Motion and second. Any further
17 discussion?

18 (No audible response).

19 BENNY WAMPLER: All in favor, signify by saying yes.
20 (All members signify by saying yes).

21 BENNY WAMPLER: Opposed, say no.
22 (No audible response).

23 BENNY WAMPLER: You have approval. The next item on
24
25

1 the agenda is a petition from CNX Gas Company LLC for pooling
2 of coal bed methane in unit BF-119, docket number VGOB-05-
3 0719-1476. We'd ask the parties that wish to address the
4 Board in this matter to come forward at this time?

5 MARK SWARTZ: Mark Swartz and Les Arrington.

6 BENNY WAMPLER: Let the record show there are no
7 others. You may proceed.

8 MARK SWARTZ: Mr. Chairman, I would like to
9 incorporate Mr. Arrington's testimony regarding the
10 applicant, the designated operator, lease terms and his
11 opinion testimony from the first six cases, if I could.

12 BENNY WAMPLER: That will be incorporated.

13 LESLIE K. ARRINGTON

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. SWARTZ:

16 Q. Les, you need to state your name again.

17 A. Leslie K. Arrington.

18 Q. Who do you work for?

19 A. CNX Gas.

20 Q. And what do you do for them?

21 A. Manager of environmental permitting.

22 Q. And with regard to BF-119, were you...did
23 you either prepare the...the paperwork or supervise the
24

--

1 people that prepared it?

2 A. Yes, I did.

3 Q. Okay. And...and with regard to the notice
4 of hearing...both the notice of hearing and the application,
5 did you in fact sign it?

6 A. Yes, I did.

7 Q. And were you the fellow that prepared
8 the...in particular that prepared the well cost estimate?

9 A. Yes.

10 Q. And you also signed it?

11 A. Yes.

12 Q. What did you do to tell people there was
13 going to be a hearing today?

14 A. We mailed by certified mail, return receipt
15 requested on June 17, 2005, and we published in the Bluefield
16 Daily Telegraph on June 17, 2005.

17 Q. Did you provide Mr. Wilson with copies of
18 your proofs of publication and proofs of mailing?

19 A. Yes, we did.

20 Q. Okay. Now this is the one unit today where
21 we've got some revisions, correct?

22 A. Yes, it is.

23 Q. And...and so the...the Board really needs to
24

1 attend to the stuff that Anita just passed out to them or at
2 least in part because those are revised exhibits, correct?

3 A. Correct.

4 Q. What was it that...that caused the need for
5 revision?

6 A. We leased an additional interest.

7 Q. Okay. And if we look at Exhibit B-2 that
8 was passed out today, that identifies the person that was
9 leased, right?

10 A. That's correct.

11 Q. Her name is Rita Gardner?

12 A. Correct.

13 Q. And are you asking that the Board dismiss
14 her?

15 A. Yes, we are.

16 Q. And that's the point of Exhibit B-2?

17 A. Correct.

18 Q. Is the revision to B-3 simply to delete her
19 as a leased party---?

20 A. Yes.

21 Q. ---because she's no longer a respondent?

22 A. That's correct.

23 Q. okay. And are the changes in the
24

1 percentages on Exhibit A page two the result of shifting her
2 interest from the unleased to the leased column?

3 A. Yes, it is.

4 Q. Okay. With regard to BF-119, is this a
5 Middle Ridge unit?

6 A. Yes, it is.

7 Q. Is...is there one frac well proposed?

8 A. Yes, it is.

9 Q. And is it in the window?

10 A. Yes.

11 Q. And what's the acreage?

12 A. 58.74.

13 Q. And what's your well cost estimate with
14 regard to this unit?

15 A. \$241,641.10 to a depth of 2,579. Permit
16 number is 6798. The well has not been drilled yet.

17 Q. And what have you been able to acquire of
18 the coal, oil and gas claims to coal bed methane and what are
19 you seeking to pool today?

20 A. We've acquired 99.2509 percent of the coal,
21 oil and gas owners' claim to coal bed methane. We're seeking
22 to pool 0.7491 percent of the coal, oil and gas owners' claim
23 to coal bed methane.

24

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1 Q. And is an Exhibit EE attached hereto,
2 correct?

3 A. Yes, it is.

4 Q. And it shows that people in tract 4-A have
5 split agreements?

6 A. It does.

7 Q. And are you asking the Board to allow you to
8 pay them directly rather than escrow their money and to pay
9 them in...in accordance with their split agreement?

10 A. That's correct, we are.

11 Q. And given the existence of the split
12 agreement for 4-A, does that resolve the escrow issues, and
13 in fact, are there no escrow requirements now?

14 A. That's correct, there is none.

15 MARK SWARTZ: Okay. That's all I have with...with
16 regard to this unit.

17 BENNY WAMPLER: Questions?

18 DONALD RATLIFF: Tracts 5A, B and C, there's no
19 surface interruption there. Those tracts were unknown.

20 LESLIE ARRINGTON: Correct, not disturbing surface
21 there, sir.

22 BENNY WAMPLER: Other questions from members of the
23 Board?

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1 (No audible response).

2 BENNY WAMPLER: Do you have anything further?

3 MARK SWARTZ: No.

4 BENNY WAMPLER: Is there a motion?

5 DONALD RATLIFF: So moved.

6 JIM MCINTYRE: Second.

7 BENNY WAMPLER: Motion for approval and second. Any
8 further discussion?

9 (No audible response).

10 BENNY WAMPLER: All in favor, signify by saying yes.
11 (All members signify by saying yes).

12 BENNY WAMPLER: Opposed, say no.

13 (No audible response.)

14 BENNY WAMPLER: You have approval. The next item
15 on the agenda is a petition from CNX Gas Company, LLC
16 appealing a decision by the director of the Division of Gas
17 and Oil with regarding a stay issue against permit number
18 6108. That's CBM well number C-29, docket number VGOB-05-
19 0719-1477. We'd ask the parties that wish to address the
20 Board in this matter to come forward at this time.

21 MARK SWARTZ: Mark Swartz and Les Arrington.

22 BOB WILSON: Bob Wilson as director of the Division
23 of Gas and Oil.

24

1 BENNY WAMPLER: State your name.

2 CLYDE HORN: Clyde Horn.

3 BENNY WAMPLER: Let the record show there are no
4 others. You may proceed.

5 MARK SWARTZ: I'm going to briefly summarize my
6 petition for appeal at some point and if, you know, by some
7 chance that some of you haven't had a chance...chance to read
8 it, but the issue is really simple and it's one issue. The
9 question is that...that we're asking you to...to answer for
10 us today is...is basically this, if a person elects to
11 participate in a frac well unit and pays their money, is that
12 an agreement to allow the well to be fraced or simulated?
13 The reason that this is important...important, there is a
14 provision in the permitting code in the Commonwealth, 45.1-
15 361.29 F2A, which says that if you're going to frac a well,
16 you need a signed consent. And 2B says that signed consent
17 can be a literal consent, in other words, a consent form that
18 says I consent to stimulate...the consent can be..the statute
19 says that consent can be a part of a lease or some other
20 agreement. And the debate that Mr. Wilson and...and Les
21 Arrington and I are having is...is an election, a decision to
22 participate where you say I want to participate in this frac
23 well unit and a tender of a check which necessarily includes
24

1 a piece of that check is to frac the well. Is that the such
2 other agreement that is required by the statute to allow Mr.
3 Wilson to say, or allow you to say, that's...that's a consent
4 under the law. And so the argument that we're having, Mr.
5 Wilson and Les and I, is essentially is a matter of common
6 sense and obviously we have two different common senses
7 collectively here, is it as a matter of common sense
8 appropriate to say, "look, if you choose to participate in a
9 frac unit and you pay your money, you just bought a ticket
10 for a frac well and you can't go into a permitting hearing
11 and object."

12 Now let me summarize the events here for...for a
13 moment for you, the facts, but that's the question. Just
14 what's your take on that? That's why we're here today,
15 because obviously we have a disagreement. This unit when the
16 title work was eventually done, this was...this was, you
17 know, subject for the discussion in front of Mr. Wilson, or
18 at least during our interaction, when...when the title work
19 was initially done, for some reason or other the people doing
20 the title in this tract...and so the permit was filed without
21 identifying some people who owned, you know, an interest in
22 the unit...when the title...they complained, asked questions,
23 and the title work was updated. It turned out that they had

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1 missed a tract. Les filed a pooling application, we came
2 back here and pooled the folks that we had missed. The
3 orders were entered and sent out and the people, somewhat to
4 our surprise frankly, chose to participate and sent their
5 money. Some of the people came to the hearing so they heard
6 testimony about this is a frac well unit, there was going to
7 be one frac well drilled in this unit, you know, that there
8 were frac costs in Exhibit C. And so we looked at that and
9 we thought about that and we wrote to Mr. Wilson and we said
10 "look, we think that a decision to participate in a frac well
11 and the payment of the cost that included some of the cost to
12 frac the well is...is a consent." And...and that's the
13 factual setting of where we are.

14 Mr. Wilson appropriately, when he learned that
15 there were other people potentially in the unit, issued a
16 stay and said, you know, you need to sort this out. So, you
17 know, we pulled in during the stay period and we got the
18 election and I wrote back to him and...or wrote to him and
19 said "look, I think we've solved the problem, you know, we've
20 got what we believe to be a consent now and we want you to
21 lift the stay." And his response was "I'm not lifting the
22 stay because I don't agree with you." You know, "I don't
23 think that this conduct is a consent." And...and that's why

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1 we're here, essentially to have you say it is a consent and
2 he needs to lift the stay.

3 The last point that I would make, because I really
4 don't think this is particularly complicated, I mean, you're
5 either going to...your gut reaction to this is going to be
6 he's right or we're right. I mean, I guess that's sort of
7 the way I see it. But the last point that I would make is it
8 just seems amazing to me that it couldn't be true that a
9 election to participate in a frac well is not a consent
10 because if it's not a consent, we're going to have to plug
11 this well. It's...you know, the Oakwood rules are for frac
12 wells. And so what's going to happen is we're going to...the
13 escrow agent is going to take the money, their share of
14 drilling the well, and then whatever it costs to plug this
15 well, they're in the unit. We're going to send them a bill
16 for that piece of money. And that just to me seems a pretty
17 amazing sequence. So my point is, you know, some of you may
18 be old enough to remember the electric Kool-aid acid test,
19 you know, and Ken Keezee, pretty amazing book. But in that
20 book, the big thing was you're either on the bus or you're
21 off. And my view of this is you cannot choose to get on the
22 I want to participate bus and be out in front of it waving
23 your arms and the permitting hearing say, "oh, but I didn't
24

1 consent to you operating this well as a frac well." That's
2 where I am and that's...that's the guidance that we need from
3 you. Now I'd love to say that you need to just jump all over
4 Mr. Wilson but I think we're having, you know, a difference
5 of opinion here and we need your help to resolve that. So
6 that's where we are.

7 BENNY WAMPLER: Mr. Horn?

8

9 CLYDE HORN: Yes, Attorney Donald...I'd like to make
10 a statement, please. Attorney Donald R. Johnson has
11 submitted a letter to the Board on my behalf. I would have
12 preferred he be here in person but I couldn't afford his fee.
13 Regardless, he has represented my family before and at the
14 time it was Oxy USA and this was in 1990. It is undisputed
15 that the ownership of the coal of which my and my family own
16 a simple fee. I feel any representation by the unit operator
17 as to the ownership of the coal bed methane was made in bad
18 faith. Mr. Dan Keen, a representative of CNX, brought me
19 this lease here and in the lease it states, "All those
20 certain tracts of land recorded described in deed book 31,
21 page 84...184 and containing one acre." He then brought the
22 royalties. I told them I'd want to buy into the well and he
23 brought the fees and showed me and all this good bit, and

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1 then he brings me a consent to stimulate, which I refused to
2 sign. I didn't think I should sign it at the time. At the
3 time I submitted my payment for the election as a
4 participating operator, I also submitted a letter dated March
5 24, 2005 with no consent to stimulate. Mr. Arrington and one
6 of his associates gave me a receipt for both the letter and
7 my payment and here's the letter that just states our names
8 and address and the cost of the well and no consent to
9 stimulate. Also, I received from Clyde L. Horn on 3/24 the
10 following checks for participation in unit C-29 and it states
11 the figures and the tracts and we're also...and received the
12 letter dated 3/24/05, Leslie K. Arrington, and with this
13 letter. Like I said, there's no consent to stimulate and he
14 accepted. In order to protect my rights. I'd have to
15 participate or waive my right as a participating operator if
16 and when the well is produced. It is my understanding my
17 payment will go into a escrow account. The operator has used
18 for more than fifteen years and continues to use the consent
19 required by the Code to keep others from drilling. In the
20 present situation, they drilled and fraced less than 750 feet
21 from my property without my consent. Based on the Code and
22 the regulations, they were in violation of the law. I
23 believe the inspectors were correct with the stay. I see no

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1 reason for the granting of the appeal for overturning the
2 inspector's decision. Thank you.

3 BENNY WAMPLER: Thank you. Mr. Wilson?

4
5 BOB WILSON: Yes, sir. I will amplify a bit of the
6 history of this particular conflict. Swartz has covered most
7 of it. The original permit for this un...drilling this unit
8 was issued on March 19th of 2004. The well was drilled in
9 June of that year, completed in July. Subsequent to the
10 drilling and completion, I was contacted by Mr. Horn who
11 brought the allegation that he owned property...mineral
12 property and surface property within the unit. He had not
13 received proper notifications. This is not something that
14 happens on a regular basis, but it does occur occasionally
15 that somebody gets missed when a...an application to drill is
16 submitted. So I understand the procedure...I wrote a letter
17 to Mr. Arrington, as the permitting Chief at CNX, instructing
18 him to do one of two things, either verify that the
19 information contained in the original permit application was
20 true and correct to the best of his knowledge, or if he found
21 there were mistakes or oversights or whatever, that he would
22 notify us of that and that we would take the appropriate
23 steps to see that it was corrected. I received a reply from

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1 Mr. Arrington on September 15th stating that they had indeed
2 overlooked Mr. Horn's tract of land when they were doing
3 their title work and stated that he would submit the required
4 permit modification in order to add Mr. Horn, modify the plat
5 and give Mr. Horn his statutory rights under the permitting
6 process which is a fifteen day objection period. Part of the
7 requirements also of the permitting process are that anybody
8 within 750 feet who owns coal has to give a consent to the
9 stimulation of that well. Now unfortunately, we're in a
10 situation here where the well had already been drilled and
11 stimulated. It had not been hooked up yet, no production had
12 been taken from this well that I'm aware of, but it had
13 already been drilled and completed. I issued a stay against
14 the permit pending the approval of the modification on the
15 17th of September. The modification was submitted on the
16 28th of September. The notification process and the fact
17 that Mr. Horn was recognized as an owner and Mr. Horn and
18 some of his family, other people were recognized as co-
19 owners, meant that there was a required consent stimulate for
20 that piece of property. The stay that was issued stated that
21 no operations could take place on that well site other than
22 maintenance of the disturbed property and proper care to make
23 sure that it...it remained in good condition and that the

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1 stay would be lifted when the modification of the permit was
2 approved.

3 The pooling, as Mr. Swartz stated, was approved by
4 the Board on the 19th of October and a supplemental order was
5 recorded on the 27th of April showing that Mr. Horn had
6 elected to participate as a full participant according to his
7 share in that well. I received a letter from Mr. Swartz on
8 May 18, 2005, stating that they considered the act of
9 electing to participate in the well and filing the necessary
10 payments with that to be a consent to stimulate the well and
11 ask that the stay be lifted. I in turn responded, denying
12 the lifting of the stay, and I based that on my reasoning
13 from the statute which says that the stimulation of coal
14 requires a signed consent from the coal operator. It also
15 says that it can be contained in the lease or other such
16 agreement. I viewed Mr. Horn's reply to the Board order as a
17 totally separate matter. There are deadlines in the orders
18 that you issued. He had a certain period of time which he
19 had to respond to that or lose his rights under the Board
20 order. He elected to participate. He had stated on a number
21 of instances, as he pointed out earlier, in letters that he
22 has not given the consent to stimulate. I don't understand
23 why somebody would chose to participate and pay their money

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1 and then not allow the progress...the progress to move
2 forward, but that's not part of what I consider in this
3 permitting decision. I don't...I don't need to understand
4 that, that's...that's somebody else's business outside of my
5 jurisdiction. So we...I denied the lifting of the stay and
6 under the provisions of the Gas and Oil statute, Section
7 45.1-361-23, an agreed permit applicant can appeal directly
8 to the Board without it going through an informal hearing
9 process in our shop and that's what they chose to do. I
10 believe that...that's all that I have at this time.

11 BENNY WAMPLER: Questions from members of the Board
12 of any of these folks?

13 (No audible response).

14 BENNY WAMPLER: So, the well was drilled in March?

15 BOB WILSON: Yes, sir, the well was...the well was
16 drilled in June---.

17 BENNY WAMPLER: In June.

18 BOB WILSON: June 16th, the well was drilled. It
19 was completed in July of that year. This was prior to my
20 being contacted by Mr. Horn.

21 BENNY WAMPLER: It was already drilled and
22 stimulated before he...before you had contact with him?

23 BOB WILSON: Yes, sir.

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1 BENNY WAMPLER: At that point, he's...he's notified
2 you that he was never made aware of the well was going to be
3 drilled?

4 BOB WILSON: Yes, sir.

5 BENNY WAMPLER: He's a coal owner?

6 BOB WILSON: He is a coal owner.

7 MARK SWARTZ: I wouldn't be here if he hadn't
8 participated. To me it's a consent. I mean, how can you pay
9 your money to become a partner in a frac well and say you
10 haven't consented to the frac. I mean, that's my question.

11 CLYDE HORN: I paid my money but I didn't consent.
12 I notified Consol a couple year ago that we owned the
13 property. And in 1990, they knew we owned the property but
14 they disregarded that. And essentially, now it's been put in
15 escrow and they're claiming title to the gas. I think that
16 we own the gas. And until that's resolved, I'm not going to
17 get anything out of it. It's in escrow and they're claiming
18 title to the gas which I have deeds that state that we own
19 the gas and coal in simple fee.

20 MARK SWARTZ: I really can't extract an answer to my
21 question from what you've just told me. I mean, I don't know
22 how you can say to somebody "I want to be a partner in your
23 frac well but I don't want it to be a frac well." I...I just

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1 can't get there from here and I wouldn't be here if this
2 hadn't happened. Frankly, we're kind of amazed that you
3 participated in the well to be blunt, you know.

4 CLYDE HORN: Well, I'm relying on the advise of my
5 counsel.

6 MARK SWARTZ: Well, Mr. Johnson you...you need to
7 probably ask him a few good questions, you know, because
8 I...I don't understand...I just don't understand this. I
9 mean, I've got the same problem, the disconnect that Mr.
10 Wilson has. I mean, he says it's not his job to...to
11 understand non linear behavior, but this just doesn't make
12 any sense to me. And...and...and, you know, I think it is
13 not a bad thing for a Board to send a message to people who
14 chose to participate as partners in a well that they're in a
15 partnership with an operator who has a right to operate the
16 well.

17 BENNY WAMPLER: Well, my...my dilemma is this, and
18 I...I'll just state this, not to sway the Board but just an
19 opinion here, when a company drills and fracs and hasn't
20 notified the person, that person...that individual has an
21 action that's civil, not before this Board. So I don't
22 know...otherwise, I think the Board would send the operator a
23 message here that we don't have, you know, rather than to

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1 send the person impacted.

2 But then trying to sort that out between the action
3 that's a civil action and the action that's...that the Board
4 legitimately has before it is more complex and I might ask
5 Sharon to...advise us as to...as to law.

6 SHARON PIGEON: Well, I think that you have to look
7 at the definitions action, 45.1-361.1. And in the definition
8 of gas or oil operations, which is what we're talking about,
9 it includes stimulating. So by definition when you decided
10 to participate, that's what you agree to participate in.
11 That's one of the things. And then if you pick up over at
12 45.1-361.29F2B, the consent can be included in other such
13 agreement. And I think this is that situation.

14 CLYDE HORN: May I say something, I didn't have a
15 choice. If I didn't participate...hadn't participated, I
16 would have waived my rights and it would have gone to
17 what...election 92. I had...I had no alternative. In other
18 words, either I participate as an operator or I'd have waived
19 my rights.

20 SHARON PIGEON: Well, I think after you decided to
21 participate, you're estopped, that is a legal term, from your
22 objection to stimulation from that point on. Now, back to
23 what Mr. Wampler was saying, prior to your election to

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1 participate, you have a good cause of action perhaps for
2 trespass and damages because there was no consent prior to
3 that time. But we're talking really about two very distinct
4 periods of time.

5 MARK SWARTZ: Just to respond to...to your
6 observation, Mr. Chairman, there...there have been a couple
7 of instances...I mean, listen, I've been doing this for at
8 least fifteen years, I think, and there have been a couple of
9 instances where we've made a mistake and drilled a well and
10 we plugged that well. So in terms of a pretty draconian
11 outcome in front of this Board and in front of Mr. Wilson,
12 if...if there hadn't been a participation here, we...this
13 well would be plugged. Okay. And we would have just let a
14 \$25,000 exercise in futility vis a vis you, and he might be
15 in civil court or not. But there have been a couple of times
16 when we have not been able to recover from a well where
17 there's been a mistake made. I mean, you know, there's a
18 huge incentive on their part not to make mistakes because
19 that's the inevitable outcome.

20 You know, what's unusual about this case is the
21 choice to participate in a frac well after it had been
22 drilled, you know, which frankly kind of surprised us. And
23 we took it as a positive sign, I guess, but it..you know, it
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1 hasn't been...there have been situations in the past where
2 that hasn't occurred. So, in terms of consequences, I
3 just...there are consequences. In this regulatory setting
4 when you make a mistake, they can be pretty draconian because
5 he's not going to let us produce a well without a consent.
6 If I didn't have participation here, I'd have...I think I've
7 got a heck of an argument, but I have nothing to talk to you
8 about. We wouldn't be here. We'd be getting, you know,
9 filing the plug-in plans. So, I mean, that's...you know,
10 this is...now will this happen again? Maybe. Will somebody
11 participate again? Maybe. But I mean, I don't think this
12 sends some kind of bad message that when you participate in a
13 unit, you're in there. You know, you got on the bus. And I
14 don't think it sends like some bad message to the people for
15 the future or set some precedent for you guys that...that you
16 might not want to live with. So this is where I'm...this is
17 at least my take of this particular situation, which may
18 never happen again. Who knows?

19 BENNY WAMPLER: Other questions from members of the
20 Board?

21 BILL HARRIS: Mr. Chairman---?

22 BENNY WAMPLER: Mr. Harris.

23 BILL HARRIS: ---let me just ask about this escrow
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1 account. At present there's an escrow account holding money.
2 Now was that set up initially---?
3 MARK SWARTZ: The order sets that up.
4 BENNY WAMPLER: Yeah, when we...when we issued the
5 order.
6 BILL HARRIS: Well, the reason I'm asking is you're
7 saying that they have your money in an escrow account. Is
8 that your---?
9 CLYDE HORN: That's my understanding. They claim
10 title to the gas which I owned it in simple---.
11 BILL HARRIS: Well, no, that's what that means,
12 though. An escrow says that there are other people who also
13 claim---.
14 CLYDE HORN: Right.
15 BILL HARRIS: --ownership of the gas and so money
16 is set aside---.
17 CLYDE HORN: Right.
18 BILL HARRIS: ---until that is settled. And I
19 would imagine---.
20 CLYDE HORN: Mine is in escrow, also, right?
21 BILL HARRIS: Yes, it is. Yes, it is. They're
22 holding the money that you would normally...that you
23 are...well, I don't know what language to use, are entitled
24

1 to I would say---.

2 MARK SWARTZ: What his share of the costs---.

3 BILL HARRIS: ---pending some type of resolution
4 here.

5 MARK SWARTZ: We haven't been able to (inaudible)
6 the well because we've got a stay.

7 BILL HARRIS: What...could I ask you why you...why
8 did you refuse to sign the stimulation agreement, was it
9 just...did it just catch you off guard or something not been
10 done or did you---?

11 CLYDE HORN: Well, they're claiming that they're---.

12 BILL HARRIS: ---feel the thing was inappropriate?

13 CLYDE HORN: It's my understanding they're claiming
14 title...that's in conflict, the gas ownership.

15 BILL HARRIS: But that's what the escrow account
16 does, though.

17 CLYDE HORN: But I would have to take it to court to
18 determine the ownership, wouldn't I?

19 BENNY WAMPLER: Or...or agree. Or have an agreement
20 ...separate agreement. A lot of people---.

21 CLYDE HORN: Well, I haven't been approached with a
22 separate agreement.

23 BENNY WAMPLER: Well, a lot of people approach...I
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1 mean they...who...who approaches who? It's gone both ways,
2 but sometimes the individual approaches the company,
3 sometimes the company approaches the individual. The ones
4 that have been before the Board have been a 50/50 split.
5 That's the only ones we've dealt with to date, I think. I
6 don't recall any except a 50/50 split where the two parties
7 agree to divide the money 50/50. Now that doesn't mean you
8 get all the money that would still be according to your
9 participation. I don't want to mislead you here, but if you
10 agree to 50/50 then by percentage of participation.

11 CLYDE HORN: I don't think there's any 50/50, Mr.
12 Wampler, I think I own it.

13 MARK SWARTZ: Well, that's a choice.

14 BENNY WAMPLER: Well, that's a....that's what...
15 that's what has to be resolved in court, that part.

16 BILL HARRIS: Because we can't...we can't decide an
17 ownership.

18 CLYDE HORN: Well, I understand that. I understand
19 that.

20 BILL HARRIS: But the money is...the money has been
21 put aside for whenever that decision or agreement is done.

22 CLYDE HORN: But you asked me why I hadn't.

23 BILL HARRIS: Yes.

24

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1 BENNY WAMPLER: And that's---.

2 MARK SWARTZ: Well, Yukon Pocahontas is the other
3 owner. Not...I mean, we don't have a dog in that hunt and
4 that's listed in the paperwork that's got a pooling order.

5 BILL HARRIS: Yeah. Have you talked with the Yukon
6 Pocahontas folks?

7 CLYDE HORN: No, I've only spoke with Mr. Arrington.

8 MARK SWARTZ: Well, we don't own it, so I mean...
9 Yukon Pocahontas is...is the other owner or the other
10 claimant and their address, you know, they're easy to find.

11 BILL HARRIS: So they're claiming ownership to the
12 same gas you're claiming?

13 CLYDE HORN: Right, but they drilled the well.

14 BILL HARRIS: Yes, they did. Well, what they do
15 again since they...they aren't claiming ownership of the gas.
16 They're saying this belongs to someone else, that's in
17 conflict as to who owns it, so that money is set aside. So
18 the escrow money is there. You know, what portion of that
19 goes to you, what portion...and you're saying 100 percent
20 should go to you, but the other folks have probably---.

21 CLYDE HORN: The...of the one acre, the percentage
22 that I own. I mean, I own like...I own one acre or
23 whatever...part of one acre of my family. I don't want to
24

1 get 50% of that one acre as my part.

2 BILL HARRIS: Yeah. The Yukon Pocahontas folks
3 again are claiming the same gas in the same location?

4 MARK SWARTZ: They're the adverse claimant, the
5 conflicting claimant.

6 LESLIE ARRINGTON: They're the oil and gas owner,
7 right? They're the oil and gas.

8 MARK SWARTZ: They're the oil and gas owner and he's
9 got the coal.

10 BENNY WAMPLER: Well, we've dealt...we've dealt with
11 that previously in a Board order.

12 BILL HARRIS: So, really you need to...you need to
13 talk to them is really where...where that leaves you because
14 legally we can't say that your order is in---.

15 CLYDE HORN: Well, I understand that but I still
16 haven't given a consent to stimulate.

17 BILL HARRIS: Well, I don't know what to advise you
18 then.

19 BENNY WAMPLER: That's...I guess that's the real
20 decision before the Board whether you have or whether you
21 haven't, in effect. That...that as I see is...is the Board
22 decision. Then...did participate...did participation result
23 in a consent? That's really...you tell me, Sharon, if you
24

1 disagree, but I think that's really what's...where the
2 Board...boiling all this down, that is the decision.

3 SHARON PIGEON: Yes, that's your issue.

4 CLYDE HORN: Right. But I...but I had no choice, in
5 choosing that, I waived my right.

6 BENNY WAMPLER: Well, I mean...you know, I don't
7 know you were estopped from coming back before the Board, you
8 know, during that period of time so.

9 MARK SWARTZ: Well, he had options.

10 BENNY WAMPLER: Or...or do---?

11 MARK SWARTZ: I mean, election options means that.
12 He had several choices.

13 CLYDE HORN: Had three.

14 MARK SWARTZ: Right. So when you say you didn't
15 have a choice, you did. You could have said, "I'm going to
16 be carried." You could have said, "I want to negotiate."
17 You could have said, "I'm not going to do anything and be
18 leased." If you...if you would have elected to be leased or
19 deemed to have been leased, we wouldn't be here today.

20 BILL HARRIS: But he would still be in a situation
21 of...as a conflicting claimant with the other folks.

22 MARK SWARTZ: Well, the well would be plugged. If
23 he was deemed to have been leased because he didn't do
24

1 anything, I mean I wouldn't be here arguing, but the failure
2 to do something is a choice. I mean it is a choice, but it's
3 not an affirmative...act like, you know, I'm going to
4 participate and here's my money. He had choices. He may
5 have misunderstood them perhaps or maybe Mr. Johnson gave him
6 some bizarre advise, you know, but Johnson's not here. We
7 don't have the benefit of his recollection of what happened
8 but, you know, he chose to be a partner.

9 CLYDE HORN: I'm just...I'm just asking that the
10 rule of law apply to me as it does to them.

11 BENNY WAMPLER: Other questions from members of the
12 Board?

13 DONALD RATLIFF: Mr. Chairman---?

14 BENNY WAMPLER: Mr. Ratliff.

15 DONALD RATLIFF: If I understood what Mrs. Pigeon
16 read to us, the election to participate, according to
17 statute, was a consent. Is that..is that the way you
18 interpret the law.

19 SHARON PIGEON: What I read to you initially was the
20 definition for gas, oil...or oil operations and it includes a
21 whole laundry list of activities. It specifically includes
22 stimulating. With that definition for what you are
23 participating in as a gas operation, I think that then meets

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1 the statutory requirement under 45.1-361.29F2B. The consent
2 required by this section may be one contained in a lease or
3 other such agreement. And I think that meets the other such
4 agreement requirement.

5 DONALD RATLIFF: Mr. Chairman, when...when you send
6 out your elections to participate, what's involved in that
7 document?

8 MARK SWARTZ: It's a Board order actually. It's
9 your order that goes out and it says you have these choices.

10 DONALD RATLIFF: You have the election.

11 MARK SWARTZ: You have these choices and it gives
12 kind of a description of them and...and...and it tells them
13 you've got a, I think it's 30 days, if I'm not mistaken.
14 And...and it tells, I'm sure, when you were elected to
15 participate, you know, you got to...you got to pay your money
16 and there's a..there's a time limit for that as well. So
17 it's..it's spelled out in your Board order. We don't tailor
18 a election notice to people. We send them the order you
19 enter and that's what causes them presumably to make the
20 choice or to ignore it, which a lot of people do.

21 DONALD RATLIFF: Mr. Horn, in October of 2004, you
22 wrote the letter saying that you did not give consent, but
23 then in March of 2005, you wrote checks and you're saying you

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1 felt like you were trapped if you didn't do that, you
2 were---.

3 CLYDE HORN: I...I did that with advise of counsel
4 to...yes, I felt like I was trapped. I mean, I was given
5 either that option or the 92 which is one eighth or twelve
6 and an eighth or something of that nature. It's option 92
7 that automatically fell to that option if I didn't make a
8 choice, or I could have took the carrier thing which---.

9 MARK SWARTZ: We could have appealed too.

10 DONALD RATLIFF: But on these dates he knew the
11 tracts were corrected---.

12 MARK SWARTZ: He was...I think you were at the
13 hearing. Weren't you at the hearing?

14 CLYDE HORN: I was here at the hearing.

15 MARK SWARTZ: Right, at the pooling hearing.

16 DONALD RATLIFF: The pooling hearing was in
17 September?

18 MARK SWARTZ: October, I think.

19 BOB WILSON: Yes.

20 MARK SWARTZ: October 19th.

21 BOB WILSON: Yes, October 19th was when the pooling
22 order was approved.

23 DONALD RATLIFF: So we had this letter dated October
24

1 12 at the pooling order? Is that on the day of the hearing?

2 BOB WILSON: Now that's one of the letters that Mr.
3 Horn had sent from time to time stating his lack of consent
4 to stimulate. I'm not sure...the October 12th letter---.

5 BENNY WAMPLER: I can't read when it was received.

6 BOB WILSON: If that...as I recall, this letter was
7 received prior to the Board hearing and in response to
8 receiving the notification of a pooling. Mr. Horne received
9 the notification and he sent this letter to us at that time
10 basically stating...I think you see there. And I believe he
11 had another letter that was included in there dated March 14,
12 2005, in which Mr. Horn states that he and his family elect
13 option one, to participate in the well, but then in the next
14 paragraph, the same folks do not give or make any concessions
15 as to the consent stimulation. The final paragraph says,
16 "Furthermore we have not given consent to stimulate to any
17 drilling units in the 80 acre grid."

18 MASON BRENT: Mr. Chairman, can I ask Mr. Swartz one
19 question?

20 BENNY WAMPLER: Mr. Brent.

21 MASON BRENT: When the Board orders are drafted and
22 distributed, would you characterize for me in some fashion
23 how many people elect to participate as opposed to being
24

1 deemed to lease?

2 MARK SWARTZ: It seemed for a long time nobody did.

3 MASON BRENT: Okay. Nobody?

4 MARK SWARTZ: Nobody to participate. Lately it's

5 fairly common, I'm thinking maybe five or ten percent

6 of...five percent of the time. I mean, compared to the past.

7 MASON BRENT: Five percent of the time?

8 MARK SWARTZ: Yeah. And we see a lot of people

9 going carried, too. So both of those options are people are

10 electing to be carried or people electing to...like he did.

11 But I bet the first ten years, I mean, you could count on one

12 hand. But recently they're...I mean, Mr...Mr. Ghent is a

13 good example. He's participated probably fifty times. And

14 there are other people...people and companies that are

15 participating in some way. So maybe five..I'm thinking it's

16 more than five out of a hundred but maybe...maybe Les...Les

17 would know better.

18 LESLIE ARRINGTON: It's not. Five out of...that

19 might be a high number, but five out of a hundred maybe.

20 MASON BRENT: Well, that kind of strikes me...if

21 somebody elects to participate, that that is somewhat unusual

22 so that's---.

23 MARK SWARTZ: I say it is, yeah.

24

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1 CLYDE HORN: Well, mostly no one is aware that you
2 can participate, as my attorney said. When...usually when
3 they bring the contracts such as this to lease, you know, it
4 more or less states 92. Give an option to sign the lease,
5 but it's not brought out that you can participate.

6 MARK SWARTZ: Everybody who's pooled gets the same
7 order.

8 BENNY WAMPLER: It's also a law and that's what's in
9 the order.

10 CLYDE HORN: Right, once you get it.

11

12 MARK SWARTZ: Yeah. I mean, I had conversations
13 with people...I mean, some people will hire a lawyer or have
14 a family member who's an attorney so they get a pooling order
15 in the mail and I get a call. I'm sure Les gets many more
16 but for some reason every once in a while somebody calls me,
17 which isn't always the best choice but...and if I try to have
18 a substantive discussion with somebody about participation,
19 we get distracted in the partnership issues and liability
20 issues and, you know, what's the number going to be down the
21 road. What additional money am I going to have to come up
22 with and so forth, insurance issues and so forth. And a lot
23 of people, I think, who pursue participation, I'm not saying

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1 that's a big number, but of the subset of people who look at
2 it and say "yeah I might want to be a partner," a lot of
3 those people are totally run off by the uncertainties of
4 being a partner. And so people who look at it rationally
5 often times are not persuaded to take that risk and
6 make...you know, and that certainly is an informed choice. I
7 mean it's an informed choice to say I'm willing to...to get
8 on this... this...on this enterprise and...and hope to make
9 some money, my proportionate share of it, but it's also a
10 reasonable... you know, I'm afraid of the risk associated
11 with this. What if there's a blow out, what if there's a
12 fire, what if there's an injury. And so I...you know, I have
13 those kinds of conversations with people who are thinking
14 about it and then ultimately decide not to do it.

15 MASON BRENT: So it seems to me that if you do
16 indeed elect to participate, you've given this an awful lot
17 of thought---.

18 MARK SWARTZ: One would hope.

19 MASON BRENT: ---about the risks involved and
20 everything that's involved and it's not a decision you're
21 just making off hand.

22 MARK SWARTZ: You're becoming a partner with a
23 company that you don't know. I mean, really.

24

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1 DONALD RATLIFF: Mr. Chairman---.

2 BENNY WAMPLER: Mr. Ratliff.

3 DONALD RATLIFF: If we had the letters, Mr. Wilson,
4 at the time of the hearing and we approved the application at
5 that time, what changed that made you issue the stay?

6 MARK SWARTZ: He'd already issued it.

7 DONALD RATLIFF: You had already issued the stay at
8 the time of the...of the hearing?

9 BOB WILSON: Yes, sir. The stay had been issued at
10 the time of the pooling and, of course, now we're talking
11 about two different processes here, the permitting process
12 and the pooling process. Technically they're totally
13 separate processes. But the stay was issued prior to the
14 pooling order. I..as I remember, I believe CNX made the
15 attempt to get a lease from Mr. Horn and were unsuccessful
16 and after they had discovered another plat and then they
17 filed for the pooling.

18 MARK SWARTZ: I think you issued a stay in September
19 and must have filed for a pooling in late September because
20 it was heard in October, I think is the sequence of things.

21 BENNY WAMPLER: Any other questions or comments?

22 (No audible response).

23 BENNY WAMPLER: Is there a motion?

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1 MASON BRENT: Mr. Chairman, based on what I've
2 heard of the law and what I've heard in testimony here and
3 the fact that I think if you do elect to participate, you've
4 given this an awful lot of thought, I mean it's not something
5 that you're just doing off handedly. I would move that we
6 lift the stay and let the well proceed.

7 BENNY WAMPLER: We have a motion, is there a second?

8 JIM McINTYRE: Second.

9 BENNY WAMPLER: Second. Is there any further
10 discussion?

11 (No audible response).

12 BENNY WAMPLER: All in favor, signify by saying yes.
13 (All members signify by saying yes).

14 BENNY WAMPLER: Opposed, say no.

15 (No audible response).

16 BENNY WAMPLER: You have approval. Thank you.

17 BOB WILSON: Mr. Chairman, if I could just make a
18 comment at this point?

19 BENNY WAMPLER: Yes, sir.

20 BOB WILSON: Again, I think that this is after all
21 the vote and everything, but I think you may have felt that
22 that was to protect your right by...by opting in and
23 participating and that has other advantages but still the
24

1 bottom line is the money that you're claiming for your gas is
2 also been claimed by some other company, not CNX, and
3 that's...that actually requires a Court action of some type.
4 So you need to realize that.

5 CLYDE HORN: I realize that.

6 BOB WILSON: And see...and see, producing
7 inoperatives in the well is not going to affect that. I
8 mean, if it's..it's...well, let me just be quiet about that.

9 CLYDE HORN: Sandra Day O'Connor said in her
10 dissent, it's just for the well healed.

11 BENNY WAMPLER: Let's take a five minute break.

12 (OFF RECORD).

13 BENNY WAMPLER: Okay. We'll come back to order.

14 The next item on the agenda is a petition from Equitable
15 Production Company for creation in pooling of a conventional
16 gas unit V-503807, docket number VGOB-05-0719-1478. We'd ask
17 the parties that wish to address the Board in that matter to
18 come forward at this time.

19 JIM KAISER: Mr. Chairman, Jim Kaiser and Don Hall
20 on behalf of Equitable Production Company.

21 MARK SWARTZ: I'm here because they've graciously
22 consented to let Mr. Wilson and I speak to you for a long
23 time.

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1 BENNY WAMPLER: I'm going to let you do that.

2 MARK SWARTZ: Okay. That's...that's why I'm here.

3 BENNY WAMPLER: Okay. All right. So the
4 parties...there are no other parties, so we'll proceed with
5 that. Go ahead, Mr. Wilson.

6 BOB WILSON: Thank you. I apologize. I was going
7 to do this before everybody escaped before the break there,
8 but I let it slip away from me there. I've been contacted by
9 CNX. They are about to submit some applications for permit
10 to drill frac wells over the Beatrice gob area. The Board
11 issued an order. I'm not even sure when this was. It's one
12 of the orders in 1996, addressing production from the
13 Beatrice sealed gob field basically taking the eighty acre
14 Oakwood units and allowing the gas that's accumulated in the
15 gob of the sealed mine to be allocated to various units.
16 They...the Board determined allowable for each unit as you
17 all remember and from time to time, we've addressed these
18 allowables. Well, the proposal now is to, as I understand
19 it, do a couple of things, drill new wells into the overlying
20 sediments and the overlying coal seams, complete these as
21 frac wells. They will not be communicating with the gob and
22 go back into some of the older wells, possibly some of the
23 ventilation holes and some of the existing gas wells maybe.

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1 Partially plug them back to the unfractured section and
2 produce those wells as frac wells.

3 We revisited the order when I first found out about
4 this and found that the order does address sealed gob gas,
5 but it also lists all coal below the Tiller as being subject
6 to this order. And that is basically...that's all the coals
7 that are producing the Oakwood field is for this...from
8 Tiller down. And as I read this order, that restricts
9 production in that area to sealed gob type production in
10 those seams and all the others. I...I don't want to
11 discourage the...the submission of the application for this.
12 I think that it has probably bypassed gas that can only be
13 picked up in this direction, but I don't think it can be
14 produced under the existing Beatrice field...Beatrice field
15 rules. And I wanted to bring this up before the Board to see
16 how...what the feeling is, how you think it should be
17 handled. How do we...how do we address this. I have passed
18 this by Sharon Pigeon, who has looked at the order this week
19 as well, so hopefully she can offer some advice as well. But
20 I...I told these folks that as it stands right now, I cannot
21 issue permits...I don't think I can issue permits in this
22 area for frac wells in any of these seams that are listed
23 here as being dedicated to Beatrice gob gas.

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1 BENNY WAMPLER: Mr. Swartz?

2 MARK SWARTZ: When...when Les talked to me about

3 this, I went back and looked at the order and...and I talked

4 to Bob about it and frankly, both of us were pretty surprised

5 the way the order was framed. The 350 million per unit

6 allowable was essentially calculated by taking an estimate of

7 the gas contained in the mine and dividing it by the number

8 of units. I think some of you, you know, were on the Board

9 at that time and remember that, that that's...so the number

10 that you can produce was calculated in...in a way that

11 pertained only to the Poca 3 seam but when the order was

12 drafted, I think it was a cut and paste issue perhaps.

13 But...but the...the field...the pool was described to include

14 all the coal seams. And frankly, I had in my mind...well,

15 it's only gob gas, it's not going to be a problem, you know.

16 And then I went back and looked at that and I had the

17 same...I had the same questions that Bob had. Our

18 alternative seemed to be that either we can come to you every

19 time we want a permit from him and have you create...carve

20 out a drilling unit from these rules which would mean we'd be

21 coming back a lot every time we wanted to do a well. That

22 would be one way for them to do that, to create a drilling

23 unit subset of these rules. Another way would be to think

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1 about this and clarify the order. Sort of, you know, go back
2 in the corporate consciousness and say this order was
3 intended to deal only with gob gas, and to the extent you're
4 not producing from the Beatrice gob, you know, both the rules
5 apply above. Then we'd be off and running, everybody would
6 be off and running. But to do the second step, and this is
7 why we're here today, you'd have to make a decision to notice
8 a hearing on your own motion that you would consider
9 modifying the Beatrice field rules. And what's happened is,
10 we've kind of run out of the areas of title. It would be the
11 north...I'm sorry, the south... southwest corner of the mine,
12 we had some big, big leases and so forth, and we kind of run
13 out of where we had easy title. Now we're doing title to 80
14 acres at a time. We could do that, but we don't have title
15 on six or eight thousand acres of the mine and so the only
16 way to do really a carte blanc modification would be for you
17 to take it up. So we're here today to get some guidance in
18 at least the two alternatives that occur to us, can you put
19 it on the docket and address it next month or, you know,
20 whatever the timing would be, or is the preference that we
21 just come back, you know, as we need to. I think that's why
22 we're here.

23 MASON BRENT: I need some comfort level with a field

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1 rule before I can issue permits.

2 MARK SWARTZ: Or a drilling unit created that carves
3 that, right.

4 BOB WILSON: It's my belief, looking at this thing,
5 this particular order may have been kind of a victim of a
6 cut and paste situation where maybe a bit of excess
7 information out of the Oakwood order got pasted into the
8 Beatrice order, including all these seams that are not
9 actually being produced right now. And again, I don't know
10 the best way to correct that.

11 SHARON PIGEON: In looking at that order, I think it
12 is actually internally inconsistent---.

13 BOB WILSON: Right.

14 SHARON PIGEON: ---and that it would be best for
15 you to, on your own motion, modify that order.

16 BILL HARRIS: You're addressing the Board now,
17 right?

18 SHARON PIGEON: Yes.

19 MARK SWARTZ: But we need to have a hearing. We
20 can't do it today.

21 SHARON PIGEON: Right.

22 BENNY WAMPLER: We've got to send out the notice.

23 SHARON PIGEON: You've got to do all of the
24

1 formalities. But rather than have you, or any operator, come
2 before us piecemeal, because the order itself setting out the
3 field rule is internally inconsistent.

4 BENNY WAMPLER: Any other comments from members of
5 the Board?

6 DONNIE RATLIFF: But you could be affecting other
7 people.

8 BENNY WAMPLER: If the Board is doing on its own
9 motion, it would put...it would notice the next time. It
10 wouldn't be individual notice, it would be publication
11 notice.

12 DONNIE RATLIFF: For just the Beatrice area?

13 BENNY WAMPLER: Yes.

14 MARK SWARTZ: This order is limited to the area of
15 the Beatrice mine. So it's six or eight thousand acres.

16 BENNY WAMPLER: Any modification, in other words,
17 the prior order would contain exactly what the other order
18 contains as far as the area.

19 SHARON PIGEON: It was supposed to only apply to the
20 gob area, though. And the way it's worded in the reference
21 to subject land goes all the way to the center of the earth.

22 BENNY WAMPLER: I think we should have the
23 transcript of that hearing as part of our discussion next
24

1 time and see what was actually in the record.

2 DONALD RATLIFF: But you are looking at drilling
3 additional wells.

4 MARK SWARTZ: Well, with the Beatrice, the initial
5 idea with the Beatrice there were a bunch of vent holes and
6 we just recycled vent holes and permitted them in the CBM
7 wells and that was the concept. And now we're stepping out
8 into areas where we're actually going to be drilling wells
9 and frac them. And..and we will not be intersecting the Poca
10 3 seam which is where the Beatrice mine is. So...and I think
11 the observation...I hadn't really thought of this in that
12 context but I think Mr. Wilson's observation is probably the
13 best explanation. If...if we don't modify the order, or if
14 we don't come back and create subsets of drilling units,
15 we're going to bypass this gas because the production from
16 the Beatrice mine is not producing this gas and it's not
17 going to. So we want to frac the seams above Beatrice. This
18 order appears to have included more in the pool that it
19 should have is the problem.

20 BENNY WAMPLER: And just for clarification, Mr.
21 Ratliff, some of his concern, I think, as you apply for
22 permit applications to modify any of those VVH holes, you
23 would notice the individuals?

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1 MARK SWARTZ: Oh, yeah. I mean it...this...he's
2 just told us don't even come here with a permit because---.
3 BENNY WAMPLER: I understand. I just wanted to
4 address his concern that people may not be noticed.
5 We...anything we do there would not...would not---.
6 MARK SWARTZ: Change that process.
7 BENNY WAMPLER: Change any...anything they would
8 have to do permitting---.
9 DONALD RATLIFF: But the escrow and pooling would
10 be---.
11 BENNY WAMPLER: Escrow and pooling would be the
12 same.
13 MARK SWARTZ: And I think because of...also,
14 thinking about your notice question, you know, if the
15 publication of what's on the docket is areas above the
16 Beatrice mine, I think that is a pretty effective...people
17 have an idea for that Beatrice mine so I think it's a fairly
18 effective message to the, you know, the people---.
19 BENNY WAMPLER: Well, we'll try to be real clear
20 with the notice, too, of what's going on, that the prior was
21 not clear to allow production above the sealed gob area was
22 stat...stated very plain...as plain English as we possibly
23 can. We'll work...the three of us will work on that to do
24

1 that.

2 MARK SWARTZ: And maybe between now and until we can
3 dig out the...the transcript but I know that's how we
4 calculated that.

5 BENNY WAMPLER: I think that's correct. I just
6 think it would be good for the Board to see the transcript
7 and make it as part of the...part of the record.

8 MARK SWARTZ: No, not a problem. I'm just saying we
9 would confirm that.

10 SHARON PIGEON: There wouldn't have been any other
11 way to arrived at that number.

12 BENNY WAMPLER: Yeah. Is that acceptable, members
13 of the Board?

14 BOB WILSON: Okay. Shall we place this then on next
15 month's agenda? We're passed the deadline for these guys to
16 file but the Board's on a motion, I think we could certainly
17 go for next month. The...the docket hasn't been put together
18 yet.

19 BENNY WAMPLER: Yes.

20 MARK SWARTZ: Thank you very much.

21 BENNY WAMPLER: Okay. Petition from Equitable
22 Production for creation and pooling of conventional gas unit
23 V-503807 has been called. There are no other parties. You

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1 may proceed.

2 JIM KAISER: I'd ask that Mr. Hall be sworn in at
3 this time.

4 DON HALL
5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. KAISER:

9 Q. Mr. Hall, if you'd state your name for the
10 Board, who you're employed by and in what capacity?

11 A. My name is Don Hall. I'm employed by
12 Equitable Production Company as district land man.

13 Q. And do your responsibilities include the
14 land underlying this particular unit and in the surrounding
15 area?

16 A. They do.

17 Q. And are you familiar with the Equ...
18 Equitable's application for the establishment of a drilling
19 unit and to pool any unleased interest within that unit for
20 EPC well V-503807, which is dated June 17, 2005?

21 A. Yes.

22 Q. Now you have passed out to the Board prior
23 to this hearing 93 pages of revised exhibits?

24

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1 A. Yes.

2 Q. Could you just kind of go through what those
3 revisions are before we continue with your testimony?

4 A. Since application, we've...we've leased some
5 people. We had some people who were listed as unknown that
6 we found and we've had some people who received the notice
7 but their address had changed and they called back and
8 requested a correct...their address be corrected and you
9 can...those changes are highlighted or shaded on the exhibit.

10 Q. Okay.

11 A. And in addition to that, we...we've added a
12 exhibit B-2 to...to dismiss the parties that have leased
13 since then...since the application was made. And I just now
14 noticed that should...the well number at the top should be V-
15 503807 instead of VAD. I'm not sure how they take the...the
16 AD should not be on there.

17 Q. So, should this application be approved,
18 we'll get the Board revised set of these revised exhibits to
19 reflect the...just a V and not the VAD, correct?

20 A. Right.

21 Q. And does Equitable own drilling rights in
22 the unit involved here?

23 A. We do.

24

1 Q. And what is the interest under lease to
2 Equitable within the unit at this time?

3 A. At this---.

4 Q. First, go back, let's see, what was the
5 interest of Equitable within the unit under lease at the time
6 of the application?

7 A. At the time of the application, we had
8 74.1659%.

9 Q. And what's under lease at this time?

10 A. We...the additional ac..tracts that we
11 picked up, now we have 74.2973%.

12 Q. And at the time of the application, the
13 unleased percentage represented 25.8341%, is that correct?

14 A. That's correct.

15 Q. And what percentage remains unleased at this
16 time?

17 A. 25.7027%.

18 BENNY WAMPLER: Did you give us a corrected page?

19 A. Corrected page of what?

20 BENNY WAMPLER: Of your percentages.

21 A. It's on page...it should be on page 36 of
22 36. In the first...there's---.

23 Q. It should be on 40 of 40, Mr. Chairman.

24

1 A. No, 36 of 36.

2 Q. Well, I've got a different one. Sorry, 36
3 of 36, he's right.

4 BENNY WAMPLER: Would you restate those percentages?

5 A. We have now 74.2973% leased and 25.7027%
6 unleased.

7 BENNY WAMPLER: Thank you.

8 Q. And obviously, subsequent to the filing of
9 the application, you continued and are continuing to attempt
10 to reach a voluntary lease agreement with all the respondents
11 listed in exhibit B-3 as unleased parties. In fact, I guess
12 you and your (inaudible) department are getting calls almost
13 everyday on this well?

14 A. Yeah, we've been working this since this
15 application has come up, we've been getting numerous calls.
16 That's the reason for the changes in the exhibits but---

17 Q. Are all the unleased parties that currently
18 exist set out at our revised Exhibit B-3?

19 A. They are.

20 Q. Okay. And we have to...we still have, even
21 though we have identified some of the unknown parties since
22 identifying them as unknown when the application was filed,
23 we're continuing to attempt to find them as we move along in
24

1 this process and we are making reasonable and diligent
2 efforts in checking sources to locate these heirs including
3 such sources such as deed records, probate records, assessors
4 records, treasurer's records and secondary sources such as
5 telephone directories, city directories, family and friends?

6 A. Yes.

7 Q. In your opinion...in your professional
8 opinion, has due diligence been exercised to locate each of
9 the respondents named herein?

10 A. It has.

11 Q. And are the addresses as set out in revised
12 Exhibit B the last known addresses for the respondents?

13 A. They are.

14 Q. Are you requesting this Board to force pool
15 all unleased interest listed in revised Exhibit B-3?

16 A. Yes.

17 Q. And are you familiar with the fair market
18 value of drilling rights here and in the surrounding area?

19 A. Yes.

20 Q. Could you advise the Board as to what those
21 are?

22 A. We put a five dollar bonus on a five year
23 term with a one-eighth royalty.

24

--

1 Q. And in your opinion, do the terms you just
2 testified to represent the fair market value of and fair and
3 reasonable compensation to be paid for the drilling rights
4 within this unit?

5 A. They do.

6 Q. Based on the respondents listed at revised
7 Exhibit B-3 who remain unleased, do you agree that they be
8 allowed the following statutory options with respect to their
9 election options with respect to their ownership interest
10 within the unit; 1) participation; 2) a cash bonus of five
11 dollars per net mineral acre plus a one-eighth of eight
12 eighths royalty; 3) in lieu of a cash bonus and a one-eighth
13 of eight eighths royalty, a share in the operation of the
14 well on a carried basis as a carried operator under the
15 following conditions: Such carried operator should be
16 entitled the share of production from the tracts pooled
17 accruing to his interest or her interest exclusive of any
18 royalty overriding royalty reserved in any leases or
19 assignments thereof or agreements relating thereto of such
20 tracts but only after the proceeds are allocable to that
21 share equal 300 percent of the share in such cost allocable
22 of interest of a leased tract or 200 percent of the share of
23 such cost allocable to the interest of any unleased tract?

24

--

1 A. Yes.

2 Q. Do you recommend that the order provide that
3 elections by respondents be in writing and sent to the
4 applicant at Equitable Production Company, 1710 Pennsylvania
5 Avenue, Charleston, West Virginia, zip code 25302.
6 Attention: Melanie Freeman?

7 A. Yes.

8 Q. And should this be the address for all
9 communications with the applicant concerning any force
10 pooling order?

11 A. Yes.

12 Q. Do you recommend that the order provide that
13 if no written election is properly made by respondent, then
14 such respondent should be deemed of elected the cash royalty
15 option in lieu of any participation?

16 A. Yes.

17 Q. Should the unleased respondents be given 30
18 days from the date that they receive the Board order to file
19 their written elections?

20 A. Yes.

21 Q. If an unleased respondent elects to
22 participate, should they be given 45 days to pay for their
23 proportionate share of well costs?

24

--

1 A. Yes.

2 Q. Does the applicant expect that party
3 electing to participate to pay in advance that parties share
4 of completed well cost?

5 A. We do.

6 Q. Should app...should the applicant be allowed
7 120 days following the recordation date of the Board order
8 and thereafter annually on that date until production is
9 achieved to pay or tender any cash bonus or delay rental
10 becoming due under the force pooling order?

11 A. Yes.

12 Q. Do you recommend the order provide that if a
13 respondent elects to participate but fails to pay the
14 proportionate share of the well cost, then the respondents
15 election to participate should be treated as having been
16 withdraw and void and they would be deemed to have leased?

17 A. Yes.

18 Q. Do you recommend that the order provide that
19 whether a respondent elects to participate but defaults in
20 regard to payment of well cost, any cash sum becoming payable
21 to that respondent be paid within 60 days?

22 A. Yes.

23 Q. In this particular case, even though it's a
24

1 conventional well, we still have a number of unknown interest
2 owners, so the Board does need to create an escrow account
3 for those interests, is that correct?

4 A. That's correct.

5 Q. And who should be named operator under any
6 force pooling order?

7 A. Equitable Production Company.

8 Q. And the total depth of proposed well?

9 A. 5880 feet.

10 Q. And is Equitable requesting the force
11 pooling of conventional gas reserves not only to include the
12 designated formations but any other formations excluding coal
13 formations which may be between those formations designated
14 from the surface to the total depth drilled?

15 A. Yes.

16 Q. And what are the estimated reserves for this
17 unit?

18 A. 200 million cubic feet.

19 Q. Are you familiar with the well cost for this
20 Board---?

21 A. Yes.

22 Q. ---for this well?

23 A. Yes.

24

--

1 Q. Has an AFE been reviewed, signed and
2 submitted to the Board as Exhibit C?

3 A. It has.

4 Q. And in your opinion, does the AFE represent
5 a reasonable of the well cost?

6 A. Yes.

7 Q. Would you state for the Board both the dry
8 hole cost and completed well cost for this well?

9 A. The dry hole cost was \$220,658, and the
10 completed well cost was \$444,390.

11 Q. Do these cost anticipate a multiple
12 completion?

13 A. They do.

14 Q. Does your AFE include a reasonable charge
15 for supervision?

16 A. Yes.

17 Q. And in your professional opinion, would the
18 granting of this application be in the best interest of
19 conservation, the prevention of waste and the protection of
20 correlative rights?

21 A. Yes.

22 MR. KAISER: Nothing further of this witness at
23 this time, Mr. Chairman.

24

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1 BENNY WAMPLER: What's the depth of this well,
2 proposed?
3 A. 5,880.
4 BILL HARRIS: Mr. Chairman, I was going to ask the
5 same question. I...and I think we've had this before and
6 it's not usually listed in the block that says depth on your
7 AFE and that always is sort of confusing. You know, at the
8 top section, it has well type depth and whatever. Depth is
9 listed as zero there. But on the contract, footage is...I
10 think it's about the only place it's listed and it might
11 be---.
12 BENNY WAMPLER: Yeah, I just wanted to clarify that
13 that's what---.
14 BILL HARRIS: ---possible in the future to try to
15 make that a little more visible.
16 DON HALL: I'll advise the person that prepares
17 these.
18 BILL HARRIS: Especially if it has zero.
19 BENNY WAMPLER: Any other questions from members of
20 the Board?
21 DONALD RATLIFF: Mr. Chairman?
22 BENNY WAMPLER: Mr. Ratliff.
23 DONALD RATLIFF: Did...did you all speak with Waylon
24

1 Jessie?

2 JIM KAISER: Yes.

3 DONALD RATLIFF: You got his address?

4 JIM KAISER: Yes we have. He...he was interested in
5 what his election options were and we explained those to him.

6 BENNY WAMPLER: Yeah, I'd asked him earlier to talk
7 to them before the meeting.

8 DONALD RATLIFF: He's listed as an unknown...his
9 address is listed unknown on 6/30 too.

10 JIM KAISER: Yeah, he's P.O. Box 126-A, Abingdon.

11 DON RATLIFF: Okay. I was emailing his son to get
12 his address for him.

13 BENNY WAMPLER: When I talked to him before the
14 hearing today he...he said he had questions on participation
15 and other things, that's why I asked you to get with him and
16 talk with him so he wouldn't have to wait unless he wanted to
17 wait.

18 JIM KAISER: Yeah, we were just trying to explain
19 the math of either directly participating or being carried.

20 BILL HARRIS: Mr. Chairman, just one other comment.

21 BENNY WAMPLER: Mr. Harris.

22 BILL HARRIS: This is actually somewhat related. I
23 know this...I guess, Mr. Kaiser, you said we would get a
24

1 corrected exhibits, the VAD, that's in the original ones
2 also, the VAD.

3 JIM KAISER: Oh, it is?

4 BILL HARRIS: It's in the original listing.

5 JIM KAISER: Okay.

6 BILL HARRIS: But in the interest of paper
7 conservation because I'm always concerned about that, I don't
8 know that all of us need to get copies of...of that again.
9 Is there some way to just have---.

10 JIM KAISER: Just Bob?

11 DON HALL: Just Bob.

12 JIM KAISER: We'll just send it to Bob.

13 BILL HARRIS: Yeah, okay. Because I don't know that
14 we all need another stack here.

15 DON HALL: I appreciate the conservation issue.
16 (Inaudible) full of these exhibits.

17 JIM KAISER: That's a lot of pages.

18 BILL HARRIS: Yeah, it is.

19 BENNY WAMPLER: Other questions from members of the
20 Board?

21 (No audible response).

22 BENNY WAMPLER: Do you have anything further?

23 JIM KAISER: Mr. Chairman, we'd ask that the
24
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1 application be approved as submitted with the revision on the
2 well nomenclature to Mr. Wilson.

3 BENNY WAMPLER: Is there a motion?

4 JIM MCINTYRE: Motion to approve.

5 BILL HARRIS: Second.

6 BENNY WAMPLER: Motion to approve and second. Is
7 there any further discussion?

8 (No audible response).

9 BENNY WAMPLER: Any further discussion?

10 (No audible response).

11 BENNY WAMPLER: All in favor, signify by saying yes.

12 (All members signify by saying yes).

13 BENNY WAMPLER: Opposed, say no.

14 DONALD RATLIFF: I'll abstain.

15 BENNY WAMPLER: One abstention, Mr. Ratliff. You
16 have approval. The next item on the agenda is a petition
17 from Columbia Natural Resources, LLC for repooling of
18 conventional gas unit 25407. This is docket number VGOB-04-
19 0921-1340-01. We'd ask the parties that wish to address the
20 Board in this matter to come forward at this time.

21 JIM KAISER: Mr. Chairman, Jim Kaiser on behalf of
22 Columbia Natural Resources, LLC. I don't think we're going
23 to need a witness in this matter. We have one available if
24

1 we need her. But this is purely a housekeeping matter. We
2 pooled this well back in April of...no, I'm sorry, September
3 of '04, and we talked to Mr. Wilson about this and it's not
4 something that we felt like we can handle in the supplemental
5 order process. So we are before you today seeking a re-
6 pooling on this, but if I can direct everybody's attention
7 to...and we did re-notice. If I can direct everybody's
8 attention to, let's see, it's going to be page one...two of
9 your Exhibit B. If you'll go down...at the top of the page
10 you'll see W.R. White, the third trustee. If you'll go down
11 one, two, three, four, five, six, seven, eight, nine entries
12 from there, you'll find Wachovia Bank, trustee for Francis
13 Bell Blakemore trust. When we pooled this back in September,
14 we inadvertently listed that interest as been leased and it
15 is unleased. So that's the only reason we're before you
16 today to re-pool. It is to correct the representation of
17 that particular small interest. And they did receive notice
18 both times. And everything else...all the other testimony
19 that was taken at the hearing in September would be the same
20 regarding our AFE and depth and potential reserves. I think
21 we even had the correct testimony in that hearing as to what
22 was leased and unleased. All we...we just had a mistake
23 under the status and was listed as leased instead of

24

--

1 unleased.

2 BENNY WAMPLER: And you corrected the percentages?

3 JIM KAISER: Yes.

4 BENNY WAMPLER: Could you put those in the record

5 please.

6 JIM KAISER: Okay. At this time, the percentage of

7 the acreage within the unit that is leased would be

8 97.903541. The percentage of the acreage that remains

9 unleased is 2.096460.

10 BENNY WAMPLER: Did you have anything, Mr. Wilson?

11 BOB WILSON: Yeah. Those numbers are different than

12 the ones that were in the recorded order. The...the

13 percentages---.

14 JIM KAISER: And that's why we're doing this.

15 BOB WILSON: Yeah. The percentages were different

16 in the...in the recorded order.

17 BENNY WAMPLER: Do you have anything further?

18 JIM KAISER: No. We'd ask that the testimony, other

19 than this one that was taken in the September hearing, be

20 incorporated and that the Board approve this pool...this re-

21 pooling application as it was submitted with the correct

22 percentages and the correct designation as that interest

23 being unleased rather than leased.

24

--

1 DONALD RATLIFF: So moved, Mr. Chairman.

2 BENNY WAMPLER: We have a motion.

3 MASON BRENT: Second.

4 BENNY WAMPLER: Second. Any further discussion?

5 (No audible response).

6 BENNY WAMPLER: All in favor, signify by saying yes.

7 (All members signify by saying yes).

8 BENNY WAMPLER: Opposed, say no.

9 (No audible response).

10 BENNY WAMPLER: You have approval. The next item on

11 the agenda is a petition from Hard Rock Exploration,

12 Incorporated for a well location exception for proposed well

13 HRVAE number 11, docket number V0...VGOB-05-0719-1479. We'd

14 ask the parties that wish to address the Board in this matter

15 to come forward at this time.

16 JIM KAISER: Mr. Chairman, Board members, Jim Kaiser

17 and Jim Stephens on behalf of Hard Rock Explorations. Mr.

18 Stephens will pass out an exhibit for the location exception

19 before we begin our testimony and we'll ask that he be sworn.

20 BENNY WAMPLER: Let the record show there are no

21 others. You may proceed.

22 JIM STEPHENS

23 having been duly sworn, was examined and testified as

24

1 follows:

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. KAISER:

4 Q. Mr. Stephens, if you'd state your name for
5 the Board, who you're employed by and in what capacity?

6 A. My name is Jim Stephens. I'm Vice President
7 of operations for Hard Rock Explorations.

8 Q. And do your responsibilities include the
9 land involved here and in the surrounding area?

10 A. Yes.

11 Q. And are you familiar with the application
12 that we filed seeking a location exception for Hard Rock well
13 number 11?

14 A. Yes.

15 Q. And have all parties been notified as
16 required by section 4-B of the Virginia Gas and Oil Board
17 regulations?

18 A. Yes.

19 Q. And is this Board....is this well being
20 drilled under the Pilgrim's Knob field rule?

21 A. Yes.

22 Q. And the...that rule has a minimum spacing
23 requirement between wells of 1,750 feet, is that correct?

24

--

1 BOB WILSON: 1,700 feet.

2 Q. 1,700 feet?

3 A. Yes.

4 Q. 1,700 feet?

5 A. Yes.

6 Q. And could you indicate for the Board the

7 ownership of the oil and gas underlying this well?

8 A. It's---.

9 Q. All right, we're going to do that in the

10 force pooling, I guess. Let me help you out there.

11 A. 76.34%.

12 Q. Yeah. Actually on this well, Hard Rock has

13 under lease 76.34%, Appalachian Energy has tract Three, the

14 Stella Carson tract, under lease which is 16.77% and EOG

15 Resources has the Plum Creek timber tract which is 1.08%

16 under lease.

17 MASON BRENT: Are you testifying?

18 Q. I'm sorry.

19 BENNY WAMPLER: That's what I was...that's what I

20 was getting ready to ask him. I was going to see if you were

21 going to ask him to verify that. Can he verify that?

22 Q. Well, and tract Two is owned by the Norfolk

23 and Southern Railroad which represents 5.81% of the unit.

24

1 Now of the percentages represented by these tracts that I've
2 just stated, can you verify that as being correct...can you
3 testify to that as being correct?

4 A. Yes.

5 Q. I'm sorry. This ought to be easier for me.

6 All right. Now the well that we're seeking an exception
7 from, the reciprocal well, is actually a old Edwards and
8 Harding well that is now owned by Appalachian Energy, is that
9 correct?

10 A. Yes.

11 Q. And we're seeking an exception of what,
12 roughly 46 feet.

13 A. 46 feet.

14 Q. 46 feet?

15 A. Yes.

16 Q. In accordance with the 1,700 foot minimum
17 spacing under the field rule. And you have talked with the
18 principals of Appalachian Energy and they're okay with this
19 location?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Okay. So there aren't any correlative
24

1 rights issues?

2 A. No.

3 Q. Could you explain for the Board in
4 conjunction with the Exhibits you passed out why we need to
5 put this location here?

6 A. Basically because of topography and power
7 lines. It's...it's the only place that we have access to
8 leased rights to drill a well that...that would be safe and
9 environmentally sound.

10 Q. And in the event this location exception
11 were not granted, would you project the estimate in loss of
12 reserves that result in waste?

13 A. Yes.

14 Q. Well, what...what would that loss be?

15 A. 300 million cubic feet.

16 Q. And the total depth of the proposed well
17 under the plan of development?

18 A. 4,900 feet.

19 Q. And are you requesting this location
20 exception covering conventional gas reserves include a
21 designated formations in the permitting application from the
22 surface to the total depth drilled?

23 A. Yes.

24

--

1 Q. Has this permit been applied for?

2 A. No.

3 Q. And in your opinion, would the granting of

4 this location exception be in the best interest preventing

5 waste, protecting correlative rights and maximizing the

6 recovery of gas reserves underlying the unit for Hard Rock

7 Virginia Eleven?

8 A. Yes.

9 MR. KAISER: Nothing further of this witness at

10 this time, Mr. Chairman.

11 BENNY WAMPLER: Questions from members of the Board?

12 (No audible response).

13 BENNY WAMPLER: I don't want Mr. Hall to feel that I

14 only pick on him. Have you been to this location?

15 JIM STEPHENS: Yes, I have, numerous times.

16 Numerous times, yes, I have.

17 BENNY WAMPLER: Is there any...the housing nearby

18 that's at the end of the...is that a state road or what is

19 that road you're showing on the---?

20 JIM STEPHENS: That's Dismal River road. Yes, it

21 is.

22 BENNY WAMPLER: Questions from members of the Board?

23 (No audible response).

24

1 BENNY WAMPLER: Do you have anything further?

2 JIM KAISER: Mr. Chairman, we'd ask that the

3 application be approved as submitted.

4 BENNY WAMPLER: Is there a motion?

5 JIM MCINTYRE: Motion to approve.

6 DONALD RATLIFF: Second.

7 BENNY WAMPLER: And second. Any further discussion?

8 (No audible response).

9 BENNY WAMPLER: All in favor, signify by saying yes.

10 (All members signify by saying yes).

11 BENNY WAMPLER: Opposed, say no.

12 (No audible response).

13 BENNY WAMPLER: You have approval. The next item on

14 the agenda is a petition from Hard Rock Exploration,

15 Incorporated for pooling of conventional gas unit PK-L22,

16 well HRVAE #11. And this is docket number VGOB-05-0719-1480.

17 We'd ask the parties that wish to address the Board in this

18 matter to come forward at this time.

19 JIM KAISER: Now, Mr. Chairman, again Jim Kaiser and

20 Jim Stephens on behalf of Hard Rock Exploration.

21 BENNY WAMPLER: Let the record show there are no

22 others. You may proceed.

23 JIM STEPHENS

24

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1 DIRECT EXAMINATION

2 QUESTIONS BY MR. KAISER:

3 Q. Mr. Stephens, if you'd again state your
4 name for the Board, who you're employed by and in what
5 capacity?

6 A. Jim Stephens. I work for Hard Rock
7 Exploration as Vice President of operations.

8 Q. And our unit is established by the Hard...by
9 the Pilgrim's Knob field rule but we did file an application
10 seeking to pool any unleased interest which was dated June
11 17, 2005, and you're familiar with that application?

12 A. Yes.

13 Q. And does Hard Rock Exploration own drilling
14 rights in the unit involved here?

15 A. Yes.

16 Q. Now prior to filing this application, did
17 you make an attempt to contact each of the unleased
18 respondents and work out a voluntary agreement?

19 A. Yes, we did.

20 Q. And in fact at this time, I guess, we are
21 still attempting to negotiate a county-wide or global lease
22 with the Norfolk and Southern Railroad which is still
23 underway and it, as probably the Board is aware, takes some
24

--

1 time. You have spoken to Frank Henderson of Appalachian
2 Energy, who are the oil and gas lessee under Tract Three,
3 about an agreement with them for their interest and you have
4 either reached an agreement or are still having ongoing
5 discussions with EOG Resources on various pieces of units
6 that they have throughout the Pilgrim's...pieces of your
7 units that they have throughout Pilgrim's Knob, is that
8 correct?

9 A. Yes, it is.

10 Q. Okay. And at this time, what interest
11 within the unit does Hard Rock have under lease?

12 A. 76.34%.

13 Q. And is the unleased percentage 23.66%?

14 A. Yes.

15 Q. And are all the unleased parties set out at
16 Exhibit B-3?

17 A. Yes.

18 Q. We don't have any unknown interest owners,
19 is that correct?

20 A. That's correct.

21 Q. And in your professional opinion, was due
22 diligence exercised to locate each of the respondents named
23 in Exhibit B?

24

--

1 A. Yes.

2 Q. And are the addresses set out in Exhibit B
3 the last known addresses for the respondents?

4 A. Yes.

5 Q. Are you requesting this Board to force pool
6 all unleased interest as listed at Exhibit B-3?

7 A. Yes.

8 Q. Are you familiar with the fair market value
9 of drilling rights in the unit here and in the surrounding
10 area?

11 A. Yes.

12 Q. Could you advise the Board as to what those
13 are?

14 A. A five dollar bonus, five year term, and an
15 eighth royalty.

16 Q. And in your opinion, do the terms you just
17 testified to represent the fair market value of and fair and
18 reasonable compensation to be paid for drilling rights within
19 this unit?

20 A. Yes.

21 Q. Now, Mr. Chairman, I would ask that the
22 testimony taken in our...in my hearing previously be item
23 number eleven which is docket number 050719-1478 regarding
24

1 the election options afforded any unleased parties and
2 their...the consequences of such be incorporated for purposes
3 of this hearing?

4 BENNY WAMPLER: We need you to redo that.

5 JIM KAISER: Because it's a different---?

6 BENNY WAMPLER: Yes.

7 JIM KAISER: ---operator? Okay.

8 Q. Jim, do you agree that the respondents that
9 remain unleased be allowed the following statutory options
10 with respect to their ownership interest within this unit: 1)
11 participation; 2) a cash bonus of five dollars per net
12 mineral acre plus a one-eighth of eight eighths royalty; 3)
13 in lieu of a cash bonus and one-eighth of eight eighths
14 royalty, a share in the operation of a well on a carried
15 basis as a carried operator under the following conditions:
16 Such carried operator shall be entitled to the share of
17 production from the tracts pooled accruing to his or her
18 interests exclusive of any royalty or overriding royalty
19 reserved in any leases, assignments thereof or agreements
20 relating thereto of such tracts but only after the proceeds
21 applicable to his share or her share equal 300% of such costs
22 applicable to the interest of the leased tract, or 200% of
23 the share of such costs applicable to the interest of an

24

--

1 unknown leased tract?

2 A. Yes.

3 Q. Do you recommend that the order provide
4 by...provide that elections by respondents be in writing and
5 sent to the applicant at Hard Rock Exploration, Inc., P.O.
6 Box 13059, Charleston, West Virginia, 25360, Attention: Jim
7 Stephens?

8 A. Yes.

9 Q. And should this be the address for all
10 communications with the applicant concerning any force
11 pooling order?

12 A. Yes.

13 Q. Do you recommend that the order provide that
14 if no written election is properly made, then such respondent
15 should be deemed to have elected the cash royalty option in
16 other words deemed to have leased?

17 A. Yes.

18 Q. Should unleased respondents be given thirty
19 days from the date that they receive the recorded Board order
20 to file their written elections?

21 A. Yes.

22 Q. If an unleased respondent elects to
23 participate, should they be given 45 days to pay their

24

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1 proportionate share of the actual well costs?

2 A. Yes.

3 Q. Does the applicant expect the party electing
4 to participate to pay in advance that parties share of well
5 costs?

6 A. Yes.

7 Q. Should applicant be allowed 120 days
8 following the recordation date of the Board order and
9 thereafter annual...annually on that date until production is
10 achieved to pay or tender any cash bonus from delay of rental
11 becoming due under the order?

12 A. Yes.

13 Q. Do you recommend the order provide that if a
14 respondent elects to participate but fails to pay their
15 proportionate share of well costs, then that respondents
16 election to participate should be treated as having been
17 withdrawn and void and may be treated as deemed to have
18 leased?

19 A. Yes.

20 Q. Do you recommend that the order provide
21 where a respondent elects to participate but defaults in
22 regard...regard to payment of those costs, that the applicant
23 or operator have 60 days after the last date on which that
24

1 respondent could have made...paid those costs to make any
2 payments that they may owe that respondent?

3 A. Yes.

4 Q. It's a conventional well. We don't have any
5 unknown parties, the Board does not need to establish an
6 escrow account, is that correct?

7 A. Yes.

8 Q. And who should be named operator under any
9 force pooling order?

10 A. Hard Rock Exploration, Inc.

11 Q. And what's the total depth of the proposed
12 well?

13 A. 4,900 feet.

14 Q. Estimated reserves of the unit?

15 A. 300 million cubic feet.

16 Q. Are you familiar with the well cost?

17 A. Yes.

18 Q. did you prepare and sign an AFE that's been
19 submitted to the Board as Exhibit C to this application?

20 A. Yes.

21 Q. Does it represent, in your opinion, a
22 reasonable estimate of the well cost?

23 A. Yes.

24

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1 Q. Would you state those cost for the Board?

2 A. A dry hole cost of \$209,469.50, and a

3 completed well cost of \$408,454.50.

4 Q. Do these costs anticipate a multiple

5 completion?

6 A. Yes.

7 Q. Does your AFE include a reasonable charge

8 for supervision?

9 A. Yes.

10 Q. And in your professional opinion, would the

11 granting of this application be in the best interest of

12 conservation, the prevention of waste, and the protection of

13 correlative rights?

14 A. Yes.

15 MR. KAISER: Nothing further of this witness at

16 this time Mr. Chairman.

17 BENNY WAMPLER: Questions from members of the Board?

18 (No audible response).

19 BENNY WAMPLER: Did you say that Exhibit B-3 is your

20 unleased parties?

21 JIM KAISER: Right.

22 BENNY WAMPLER: Mine is showing leased.

23 JIM KAISER: Well, unleased to the applicant. In

24

--

1 other words, the Railroad is unleased to anybody and then the
2 tracts three and four are leased to other oil and gas
3 lessees.

4 BENNY WAMPLER: And that's interest within the unit,
5 right, rather than...it says interest...within interest but
6 you meant unit?

7 JIM KAISER: Yeah, it should say interest in the
8 unit.

9 BENNY WAMPLER: Other questions from members of the
10 Board?

11 (No audible response).

12 BENNY WAMPLER: Do you have anything further?

13 JIM KAISER: We'd ask that the application be
14 approved as submitted, Mr. Chairman.

15 BENNY WAMPLER: Is there a motion?

16 JIM MCINTYRE: Motion to approve.

17 DONALD RATLIFF: Second.

18 BILL HARRIS: Second.

19 BENNY WAMPLER: Second. Any further discussion?

20 (No audible response).

21 BENNY WAMPLER: All in favor, signify by saying yes.

22 (All members signify by saying yes).

23 BENNY WAMPLER: Opposed, say no.

24

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1 (No audible response).

2 BENNY WAMPLER: You have approval. Next item on the
3 agenda is a petition from Appalachian Energy, Inc. for
4 creation and pooling of conventional gas unit AE-151, docket
5 number VGOB-05-0719-1481. We'd ask the parties that wish to
6 address the Board in this matter to come forward at this
7 time. State your names for the record please.

8 JIM KAISER: Yes, I'm sorry. I was reviewing
9 something my client just presented me. Mr. Chairman, members
10 of the Board, Jim Kaiser and Frank Henderson on behalf of
11 Appalachian Energy. I would ask that Mr. Henderson be sworn
12 at this time.

13 BENNY WAMPLER: Let the record show there are no
14 others. You may proceed.

15 FRANK HENDERSON
16 having been duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. KAISER:

20 Q. Mr. Henderson, if you'd state your name for
21 the Board, who you're employed and in what capacity?

22 A. Frank Henderson, President of Appalachian
23 Energy.

24

--

1 Q. And do your responsibilities include the
2 land involved here and in the surrounding area?

3 A. Yes.

4 Q. And are you familiar with the application
5 that...that we filed seeking the establishment and the
6 pooling of any unleased interest for Appalachian Energy, well
7 AE-151, which was dated June 17, 2005?

8 A. Yes.

9 Q. And this is a conventional well?

10 A. Yes, it is.

11 Q. I know you've been before the Board on
12 previous occasions to pool some coalbed methane wells, is
13 that correct?

14 A. That's correct.

15 Q. Okay. Does Appalachian Energy own drilling
16 rights in the unit involved here?

17 A. Yes.

18 Q. And prior to filing the application, were
19 efforts made to contact each of the respondents owning an
20 interest within the unit and an attempt made to work out a
21 voluntary agreement regarding the development of the unit?

22 A. Yes.

23 Q. And what is the interest of Appalachian
24

1 Energy under lease in the unit at this time?

2 A. 92.41%.

3 Q. And is the unleased party, the other oil and
4 gas lessee under tract two, is...are they set out in Exhibit
5 B-3 to the application?

6 A. Yes.

7 Q. And what is the interest in the unit that
8 remains unleased?

9 A. 7.59%.

10 Q. Okay.

11 MR. KAISER: Mr. Chairman, at this time I think it
12 would be a good time for Mr. Wilson to introduce into the
13 record a letter that he received from Blue Flame, who is the
14 oil and gas lessee under tract two, and then once he reads
15 that in, we'd like to read the...these letters that were
16 received today from Blue Flame which will address Mr.
17 Wilson's letter.

18 BOB WILSON: Yes, sir. We received a letter on July
19 16th, I think it was, from Blue Flame Energy Corporation
20 signed by Ken Hall, General Manager. And I will very briefly
21 go through the text of this thing. "Please be advised Blue
22 Flame Energy Corporation objects to the proposed location of
23 the above referenced well and issuance of the requested

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1 pooling order for said well. Appalachian Energy proposes
2 pooling 7.67 acres of the Charles French and others fee tract
3 that Blue Flame Energy has under lease. Blue Flame Energy
4 has one existing well, V-2120 on the Charles French tract and
5 has a surveyed location for the proposed well V-2305, which
6 is 1815.01 feet from the proposed AE-151. Blue Flame Energy
7 Corporation has not yet applied for a permit to drill its
8 proposed well V-2305. The issuance of a permit to
9 Appalachian Energy to drill proposed well AE-151 would
10 prevent Blue Flame from fully developing the Charles French
11 et al tracts. If you have any questions please feel free to
12 contact me."

13 JIM KAISER: Okay. And since that time Mr.
14 Henderson has been talking with Ken Hall, who is the general
15 manager of Blue Flame Energy Corporation, and we have
16 received this morning...we don't have...we can pass it around
17 and let you all see it and then when these hearings are over,
18 Mr. Henderson will go back to his office and make some copies
19 and give them to Mr. Wilson. But would you rather...do you
20 want to look at them or do you want me to just read them?

21 BENNY WAMPLER: You can read them into the record
22 and then we'll...we'll look at them to verify.

23 JIM KAISER: I'll read this into the record. It's

24

--

1 dated July 19, 2005, addressed to Bob Wilson, Division of Oil
2 and Gas.

3 "Dear Mr. Wilson, please be advised that Blue Flame
4 Energy, Corporation and Appalachian Energy, Inc. have entered
5 into a letter agreement," which I'll read here in a minute,"
6 this date, whereby we mutually agree to resolve our
7 permitting issues pertaining to Blue Flame, proposed well V-
8 2305 and Appalachian Energy's proposed well, AE-151. I've
9 attached for the record a copy of the letter agreement.
10 Pursuant to the terms and conditions of the letter agreement,
11 Blue Flame Energy hereby withdraws its objection to the
12 issuance of a permit for Appalachian Energy's proposed well
13 AE-151."

14 Obviously, Mr. Hall is not here to explain that but
15 I think he means...we haven't filed for the permit, have we?

16 FRANK HENDERSON: Not yet, no.

17 JIM KAISER: So I think what he means is he
18 withdraws his objection to the force pooling and the location
19 exception. I'll now read the letter agreement between the
20 two parties into the record.

21 "Appalachian Energy and Blue Flame Energy, Corp.
22 have agreed to resolve the spacing issue between AE-151 and
23 Blue Flame well...proposed Blue Flame well VA-2305. Blue
24

1 Flame Energy Corporation agrees to withdraw its objection to
2 AE-151 force pooling providing that the following conditions
3 are met. AEI will not---", that's Appalachian Energy, "will
4 not object to any Blue Flame well which is located 2,000 feet
5 plus or minus from well AE-151. Appalachian Energy will not
6 object to Blue Flame using the Evans and Harding-54," which
7 is now an Appalachian Energy well, "and Appalachian Energy
8 151 access road providing that Blue Flame obtains road use
9 agreements from the surface owners and that Blue Flame will
10 agree to maintain the EH-54 and AE-151 access roads in as
11 good or better conditions than they exist prior to be at Blue
12 Flame's use. Such condition to be documented by video. Blue
13 Flame Energy...3) Blue Flame energy will move well...proposed
14 well V-2305 north northwest approximately 800 feet if field
15 conditions are acceptable for a site. This will result in
16 spacing of 2000 feet, plus or minus, from well AE-151 and
17 1250 feet, plus or minus, from well K217...2117 which is a
18 well in Kentucky." This unit bumps right up against the
19 Kentucky line. "If field conditions are not acceptable, Blue
20 Flame will not locate well V-2305," which is their proposed
21 well which they have not applied for permit. There's nothing
22 existing on this well filed with Mr. Wilson's office, "or any
23 other well within 1815 feet of Appalachian Energy well 151.

24

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1 4) If Blue Flame Energy moves well...proposed well V-2305
2 north northwest to provide spacing of 2000 feet, plus or
3 minus, from well AE-151, Appalachian Energy will make
4 available inter...interruptible pipeline capacity on its
5 gathering system should capacity become available in the
6 future. Accepted to and agreed to by Frank Henderson,
7 President of Appalachian Energy and Ken R. Hall, General
8 Manager of Blue Flame Energy."

9 BOB WILSON: Mr. Chairman?

10 BENNY WAMPLER: Mr. Wilson.

11 BOB WILSON: I spoke with Mr. Hall prior to his
12 filing this letter that I have passed out to you. He
13 indicated that the purpose of this letter was to keep his
14 options open, that he was interested in pursuing in an
15 agreement with Appalachian. And he asked if he could be
16 assured of receiving a location exception, if he came before
17 the Board later, which I gave my usual answer to that. I
18 don't ever tell anybody what the Board will do. That he...
19 his, I think, sole contention was that he would be able to
20 drill a well on his acreage that adjoins Appalachian Energy
21 and was...was more interested, I think, in...in preserving
22 his options at that time because they had not yet negotiated
23 an agreement.

24

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1 BENNY WAMPLER: Thank you.

2 JIM KAISER: Do you want me to go on or do you want
3 to pause---.

4 BENNY WAMPLER: Yes, go ahead. Continue

5 JIM KAISER: Okay. So at this time we'll go back to
6 our percentages leased. We have 92.41% of the unit under
7 lease, right?

8 A. That's correct.

9 Q. And 7.59% of the unit represents the tract
10 that Blue Flame has under lease, correct?

11 A. That's correct.

12 Q. Okay. We don't have any unknown interest
13 owners within the unit, is that correct?

14 A. Yes.

15 Q. And are the addresses set out in Exhibit B
16 to the application the last known addresses to the
17 respondents?

18 A. Yes.

19 Q. Are you requesting this Board to force pool
20 all unleased interest listed at Exhibit B-3, that being the
21 7.59% that's represented by tract two, that's under lease to
22 Blue Flame?

23 A. Yes.

24
--

1 Q. And are you familiar with the fair market
2 value of drilling rights in the unit here and in the
3 surrounding area?

4 A. Yes.

5 Q. Can you advise the Board as to what those
6 are?

7 A. Five dollar bonus, five year term, one-
8 eighth royalty.

9 Q. And as to Blue Flame's interest, should
10 you...should they be allowed the following statutory options;
11 1) participation; 2) a cash bonus of five dollars per net
12 mineral acre plus a one-eighth of eight-eighths royalty; 3)
13 in lieu of a cash bonus a one-eighth of eight-eighths
14 royalty, a share in the operation of the well on a carried
15 basis as a carried operator under the following conditions:
16 Such carried operator should be entitled to the share of
17 production from the tracts pooled accruing to his interest
18 exclusive of any royalty or reserved any leases, assignments
19 thereof or agreements relating thereto on such tracts but
20 only after the proceeds applicable to their share equal 300
21 percent of the share of such cost applicable to a leased
22 tract, or 200 percent of the share of such cost applicable to
23 an unleased tract?

24

--

1 A. Yes.

2 Q. Do you recommend that the Board provide that
3 elections by any respondent be in writing and sent to the
4 applicant to Appalachian Energy, Inc., P.O. Box 2406,
5 Abingdon, Virginia, 24212, Attention: Frank Henderson?

6 A. Yes.

7 Q. Should this be the address for all
8 communications with the applicant concerning any force
9 pooling order?

10 A. Yes.

11 Q. Do you recommend that the order provide that
12 if no written election is properly made, then such respondent
13 should be deemed of electing the cash royalty option in lieu
14 of participation?

15 A. Yes.

16 Q. Should unleased respondents be given 30 days
17 from the date the Board order is received to file their
18 written election?

19 A. Yes.

20 Q. If an unleased respondent elects to
21 participate, should they be given 45 days to pay their
22 proportionate share of well cost?

23 A. Yes.

24

1 Q. Does the applicant expect the party electing
2 to participate to pay in advance that party's share of
3 completed well cost?

4 A. Yes.

5 Q. Should an applicant be allowed 120 days
6 following the recordation date of the Board order and
7 thereafter annually and on that date until production is
8 achieved to pay or tender any cash bonus or delay rental
9 which may be due under any force pooling order?

10 A. Yes.

11 Q. And do you recommend that the order provide
12 that if a respondent elects to participate but fails to
13 prepare their...fails to pay their proportionate share of
14 well cost, then they...that order...that election be
15 withdrawn and they be treated as if no initial election had
16 been filed, in other words, deemed to have leased?

17 A. Yes.

18 Q. Do you recommend that the order provide that
19 where a respondent elects to participate but defaults in
20 regard to payment of those cost, then any cash sum that the
21 operator owes the respondent be paid within 60 days after the
22 last date on which that respondent should have made payment?

23 A. Yes.

24

--

1 Q. The Board does not need to establish an
2 escrow account for this unit, is that correct?

3 A. That's correct.

4 Q. And who should be named operator under any
5 force pooling order?

6 A. Appalachian Energy.

7 Q. And what's the total depth of the proposed
8 well?

9 A. 6,000 feet.

10 Q. Estimated reserves for the unit?

11 A. 500 million.

12 Q. Are you familiar with the well cost?

13 A. Yes.

14 Q. Has an AFE been reviewed, signed, and
15 submitted to the Board as Exhibit C?

16 A. Yes, it has.

17 Q. In your opinion, does this AFE represent a
18 reasonable estimate of well cost?

19 A. Yes.

20 Q. Could you state for the Board what those
21 are?

22 A. Dry hole cost is \$238,295, completed well
23 cost \$469,145.

24

--

1 Q. Do these cost anticipate a multiple...
2 multiple completion?
3 A. Yes.
4 Q. Does your AFE include a reasonable charge
5 for supervision?
6 A. Yes.
7 Q. And in your professional opinion, would the
8 granting of this application be in the best interest for
9 conservation, the prevention of waste and the protection of
10 correlative rights?
11 A. Yes.
12 MR. KAISER; Nothing further of this witness at
13 this time, Mr. Chairman.
14 BENNY WAMPLER: Questions from members of the Board?
15 MASON BRENT: Mr. Chairman, I just have one
16 observation here.
17 BENNY WAMPLER: Mr. Brent.
18 MASON BRENT: I think normally when we are presented
19 with creation of pooling of a well and also on the same
20 docket a well location exception, you normally deal with the
21 well location exception first rather than creation and
22 pooling of the well. So my observation would be anything we
23 do as far as this goes is subject to the well being...
24

1 location of the well being approved.

2 BENNY WAMPLER: I think that's a good observation.

3 JIM KAISER: That's fine. I think we can ask you to
4 vote on this after we do the location exception if you want.

5 BENNY WAMPLER: Any...any questions from members of
6 the Board?

7 (No audible response).

8 BENNY WAMPLER: We'll just hold any decision now and
9 go ahead to the next agenda item and make a decision on that.
10 The next item is a petition from Appalachian Energy
11 Incorporated for a well location exception for proposed well
12 AE-151, docket number VGOB-05-0719-1482. We'd ask the
13 parties that wish to address the Board in this matter to come
14 forward at this time.

15 JIM KAISER: Again, Mr. Chairman, Jim Kaiser and
16 Frank Henderson on behalf of Appalachian Energy.

17 BENNY WAMPLER: Let the record show there are no
18 others. You may proceed.

19 JIM KAISER: Again, I'd ask the Board in their
20 review of these two applications together to remember that
21 the letter from Blue Flame and the agreement that's been
22 passed around now between the two parties apply as to both
23 these hearings.

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FRANK HENDERSON

3

DIRECT EXAMINATION

4 QUESTIONS BY MR. KAISER:

5

Q. Mr. Henderson, you're President of

6

Appalachian Energy?

7

A. That's correct.

8

Q. And do your responsibilities include the

9

land involved here and in the surrounding area?

10

A. Yes.

11

Q. And you're familiar with the application we

12

filed seeking a location exception for Appalachian Energy

13

well 151?

14

A. Yes.

15

Q. And have all interested parties been

16

notified as required by section 4-B of the Virginia Gas and

17

Oil Board regulations?

18

A. Yes.

19

Q. And the ownership of the oil and gas

20

underlying this unit would be Appalachian Energy owning

21

92.41% and tract two being under lease to Blue Flame Energy

22

which represents 7.59%, is that correct?

23

A. That's correct.

24

--

1 Q. Does Appalachian Energy have the right to
2 operate the reciprocal well, that being the well that we're
3 seeking this well exception from?

4 A. Yes.

5 Q. And that is---?

6 A. Well, each---.

7 Q. ---designated as Edwards and Harding well
8 54, which is known by your company?

9 A. That's correct.

10 Q. Okay. So there are no correlative rights
11 issues?

12 A. That's correct.

13 Q. And could you explain for the Board why
14 we're seeking this location exception?

15 A. Basically we're seeking a location exception
16 to maintain about a 500 foot distance from the Pine Mountain
17 Trail and to...for surface conditions.

18 Q. For surface and topographic conditions?

19 A. Yes.

20 Q. Okay. And in the event this location
21 exception were not granted, would you project the estimated
22 loss of reserves?

23 A. About 500 million.

24

1 Q. And you're previously testified in the force
2 pooling with the total depth of the well as 6,000 feet?

3 A. That's correct.

4 Q. And are you requesting the location
5 exception cover conventional gas reserves to include any
6 formations that will be from surface to total depth drilled
7 that will be designated in your permit application?

8 A. Yes.

9 Q. And in your opinion, would the granting of
10 this location exception be in the best interest of preventing
11 waste, protecting correlative rights and maximizing the
12 recovery of the gas reserves underlying the unit for AE-151?

13 A. Yes.

14 MR. KAISER: Nothing further of this witness at
15 this time, Mr. Chairman.

16 BENNY WAMPLER: Questions from members of the Board?

17 BILL HARRIS: Mr. Chairman, just to comment---.

18 BENNY WAMPLER: Mr. Harris.

19 BILL HARRIS: ---it's sort of difficult to...when
20 we talk about 500 feet from an existing well to not have a
21 plat that shows that existing well and that just sort of
22 makes it difficult for us to see what's going on.

23 JIM KAISER: I'm not sure what you're talking about.

24

--

1 We---.

2 BILL HARRIS: In your well location.

3 JIM KAISER: We do show that well we're seeking an
4 exception from. It's down at about 5:30 on the clock.

5 BENNY WAMPLER: But there's nothing in this
6 particular application for exception. You're relying on the
7 other application.

8 JIM KAISER: I'm not following you.

9 BENNY WAMPLER: There's not a plat in the
10 application for the---.

11 JIM KAISER: In the location exception?

12 BENNY WAMPLER: That's right.

13 JIM KAISER: That's my...that's my fault. I...we
14 can...I guess it was submitted with the location exception.
15 It should have been submitted with the loc...with the force
16 pooling. It should have been with the location exception,
17 also.

18 BOB WILSON: There is one in the original
19 application, yes.

20 BILL HARRIS: Oh, okay. so it's...and it is the EH-
21 54?

22 JIM KAISER: Yes, sir.

23 BILL HARRIS: Down at the bottom?

24

--

1 JIM KAISER: Right, which is now an Appalachian
2 Energy well.
3 DONALD RATLIFF: Mr. Chairman, it's not 500 feet.
4 It's 2200---.
5 BENNY WAMPLER: 2203.97.
6 DONALD RATLIFF: You were 500 feet from the trail,
7 right?
8 FRANK HENDERSON: That's correct.
9 BILL HARRIS: The trail is at...is along Pine
10 Mountain in the Kentucky/Virginia border, is that the 500
11 feet you were---?
12 FRANK HENDERSON: That's correct.
13 BILL HARRIS: ---referring to? So that's in the
14 other direction to the north?
15 FRANK HENDERSON: To the north.
16 BENNY WAMPLER: Other questions?
17 (No audible response).
18 BENNY WAMPLER: Do you have anything further?
19 JIM KAISER: Mr. Chairman, we'd ask that the Board
20 first vote on and approve the location exception application
21 as submitted, and then turn around and vote on the force
22 pooling application as submitted which was submitted in the
23 hearing prior to this one...or heard in the hearing prior to
24

1 this one.

2 DONALD RATLIFF: Motion to approve, Mr. Chairman.

3 BENNY WAMPLER: Ready to approve both?

4 JIM McINTYRE: Second.

5 BENNY WAMPLER: Was that...just for clarification

6 was that for both?

7 DONALD RATLIFF: Yes.

8 BENNY WAMPLER: And second for both. Any further

9 discussion?

10 (No audible response).

11 BENNY WAMPLER: All in favor, signify by saying yes.

12 (All members signify by saying yes).

13 BENNY WAMPLER: Opposed, say no.

14 (No audible response).

15 BENNY WAMPLER: You have approval. Thank you. The

16 next item on the agenda is a petition from EOG Resources,

17 Incorporated for creation and pooling of conventional gas

18 unit Plum Creek well number 16-05, docket number VGOB-05-

19 0719-1483. We'd ask the parties that wish to address the

20 Board in this matter to come forward at this time.

21 TIM SCOTT: Mr. Chairman, Tim Scott and Skip Bacon

22 for EOG Resources. And one thing, I'd like to skip down this

23 docket just to say that we are going to continue Item number

24

1 eighteen because there is a notice issue with CNX. I thought
2 they had been notified---.

3 BENNY WAMPLER: All right.

4 TIM SCOTT: ---but they have not.

5 BENNY WAMPLER: That will be continued.

6 TIM SCOTT: Yes, sir.

7 BENNY WAMPLER: Let the record show there are no
8 others. You may proceed.

9 TIM SCOTT: One other thing, Mr. Chairman, that I
10 noticed is that our AFE, if you all look at your application,
11 it's pretty blurred so I made copies from the original.

12 BENNY WAMPLER: Thank you.

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PETER BACON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. SCOTT:

Q. Mr. Bacon, would you state your name for the record, please?

A. Peter E. Bacon.

Q. And by whom are you employed?

A. EOG Resources, Inc.

Q. And what is your job description with EOG?

A. I'm the land manager for the Pittsburgh division.

Q. Okay. Are you familiar with EOG's application asking for the establishment of a drilling unit and pooling for a well...Plum Creek well number 16-05, which is dated on June 17, 2005?

A. Yes.

Q. Now this unit is not...is not located in the established field, right, it's field wide...field wide spacing?

A. Statewide.

Q. Statewide spacing, is that correct?

1 A. Correct.

2 Q. And does this unit contain 112.69 acres?

3 A. Yes, it does.

4 Q. EOG has a portion of this unit under lease,
5 is that correct?

6 A. Correct.

7 Q. And are there any respondents listed on
8 Exhibit B-3 who should be dismissed from this hearing?

9 A. No.

10 Q. One other question, Mr. Bacon, about that,
11 is it...are you all currently in ongoing negotiations with
12 those parties listed on Exhibit B-3 to try to reach voluntary
13 agreement?

14 A. Yes, we are.

15 Q. Okay. What percentage of this unit does EOG
16 have under lease?

17 A. 78.43%.

18 Q. And was notice...and those provisions of the
19 oil and gas regs and the Virginia Code complied with as far
20 as this hearing is concerned?

21 A. Yes.

22 Q. And those were accomplished by certified
23 mailing and notice in the newspaper?

24

25

1 A. Yes, they were.

2 Q. Was it the Bluefield Daily Telegraph?

3 A. Yes.

4 Q. Are there any unknown owners in this unit or
5 parties whose addresses unknown?

6 A. No, there are not.

7 Q. Have you filed proofs of publication and
8 affidavit of mailing and certified mailings with the Board?

9 A. Yes, we have.

10 Q. Okay. And that was just presented to Mr.
11 Wilson, is that correct?

12 A. Yes.

13 Q. Is EOG authorized to conduct business in the
14 Commonwealth of Virginia?

15 A. Yes, we are.

16 Q. Okay. Has it also registered with the
17 Department of Mines, Minerals and Energy?

18 A. Yes, we have.

19 Q. And does it have a blanket bond on file?

20 A. Yes, we do.

21 Q. If you were to reach an agreement with the
22 parties responded on Exhibit 3...B-3, what lease terms would
23 you offer these parties?

24

1 A. Five dollars an acre, an eighth royalty,
2 five year term.

3 Q. Okay. Is this reasonable compensation for a
4 lease in this area?

5 A. Yes, it is.

6 Q. What percentage of the oil and gas estate
7 are you asking the Board to pool?

8 A. 21.57%.

9 Q. Okay. Let's see...one second...is there an
10 escrow requirement for this particular unit?

11 A. No.

12 Q. Okay. Are you requesting the Board to pool
13 the unleased parties listed on Exhibit B-3?

14 A. Yes, we are.

15 Q. And are you also requesting EOG to be named
16 the operator for this unit?

17 A. Yes, we are.

18 Q. Do you recommend that the order provide that
19 the elections by the respondents be in writing and sent to
20 the applicant at EOG Resources, South Point Plaza One, 400
21 Southpoint Blvd, Suite 300, Canonsburg, Pennsylvania 15317,
22 Attention: Peter E. Bacon, Division Land Manager?

23 A. Yes.

24

1 Q. And should this be the address for all
2 communications with the applicants concerning any pooling
3 order?
4 A. Yes.
5 Q. Okay. Are you familiar with the total depth
6 of this particular well, Mr. Bacon?
7 A. Yes, 5---.
8 Q. Well---.
9 A. I'm sorry, 5,970 feet.
10 Q. And are you requesting the Board to pool all
11 formations between the surface and the designated depth
12 except coal?
13 A. Yes.
14 Q. What are the estimated reserves for this
15 unit?
16 A. 300 million cubic feet.
17 Q. And what is the estimated dry hole cost for
18 this well?
19 A. \$231,300.
20 Q. And the completed cost?
21 A. \$369,700.
22 Q. Okay. Have we submitted an AFE to the
23 Board?
24

1 A. Yes.

2 Q. And it's been signed, of course?

3 A. Yes.

4 Q. Does this AFE include a reasonable charge
5 for supervision?

6 A. Yes, it does.

7 Q. And in your opinion, if the unit is
8 established and the interests are pooled, would it promote
9 conservation, prevent waste and protect correlative rights?

10 A. Yes.

11 Q. Okay.

12 TIM SCOTT: That's all the questions I have for Mr.
13 Bacon.

14 BENNY WAMPLER: Questions from members of the Board?

15 BILL HARRIS: Mr. Chairman, I have actually two or
16 three little questions. One is about the..your exhibits--.

17 PETER BACON: Yes, sir.

18 BILL HARRIS: B-1 and B-3 both have, I guess it's
19 the tract three, the Fowler-Blankenship folks---.

20 PETER BACON: Yes, sir.

21 BILL HARRIS: It has possible lessee for both of
22 those, I'm not sure---?

23 PETER BACON: Yes. We sent---.

24

--

1 BILL HARRIS: ---what that means.

2 PETER BACON: ---well, it...when we conducted the
3 title examination, Mr. Harris, the...we found a lease to
4 Edwards and Harding and then we looked for assignments out of
5 them and that was the last party who was listed as a party
6 lessee for those particular interests, so we notified that
7 company at that address.

8 BILL HARRIS: So where does that leave us then? I
9 mean if...I mean, I know it says possible, but I mean if...I
10 don't know what that does for us in terms of---?

11 PETER BACON: Well, as far as...I mean, we didn't
12 want to ignore it and we did try to notify them that this
13 hearing was going to take place. But we also notified
14 the...the parties who are the owners in the tract as well.
15 So we don't know whether they're leased or not, not based on
16 what we found in the records.

17 BILL HARRIS: So does that affect our deliberations
18 in terms of percent lease...percent unleased. I mean, I
19 don't know if that has any...I guess I'm asking the Board.

20 TIM SCOTT: Whoever owns...whoever owns the interest
21 has been contacted by or had been attempted to be contacted
22 by us to try and work out some arrangement.

23 BILL HARRIS: So technically it's not..it's

24

--

1 unleased?

2 BENNY WAMPLER: Put it on B-3 is...as parties not
3 reached agreements.

4 BILL HARRIS: Not reached an agreement, I guess
5 that's where we---.

6 BENNY WAMPLER: That's how we'd handle it.

7 BILL HARRIS: Yeah. Okay. Okay. Just a little
8 question.

9 TIM SCOTT: Yes, sir.

10 BILL HARRIS: Your AFE, and then I guess this is a
11 pet thing of mine is trying to find the depth and finally
12 under footage drilling 5,970, you know, I always like to see
13 that somewhere very prominent up above.

14 PETER BACON: Okay.

15 BILL HARRIS: And I see there is no place for it but
16 there is a place for water depth.

17 PETER BACON: For what, water depth?

18 BILL HARRIS: Water depth, yes.

19 BENNY WAMPLER: Right hand column.

20 BILL HARRIS: Right hand column at the top under
21 budget year 2005.

22 PETER BACON: Well, it...it probably would be more
23 appropriately put under that column there TVD, you know,
24

1 total vertical depth and measured depth.

2 BILL HARRIS: Oh, that's---.

3 PETER BACON: And I...I'll instruct our engineering
4 department to start putting them in that column.

5 BILL HARRIS: That would be helpful but...but now
6 I'm curious about water depth. Is that where you, you
7 know---?

8 PETER BACON: EOG Resources is also involved in
9 offshore Gulf of Mexico and so this is the uniform---.

10 BILL HARRIS: Oh, okay. Sort of a generic form that
11 you're using?

12 PETER BACON: Kind of a generic form, yes.

13 BILL HARRIS: Right. Thank you.

14 BENNY WAMPLER: Other questions from members of the
15 Board?

16 (No audible response).

17 BENNY WAMPLER: Do you have anything further?

18 PETER BACON: No, sir.

19 BENNY WAMPLER: Is there a motion?

20 JIM MCINTYRE: Motion to approve.

21 DONALD RATLIFF: Second.

22 BENNY WAMPLER: Motion to approve and second. Any
23 further discussion?

24

1 (No audible response).

2 BENNY WAMPLER: All in favor, signify by saying yes.

3 (All members signify by saying yes).

4 BENNY WAMPLER: Opposed, say no.

5 (No audible response).

6 BENNY WAMPLER: You have approval.

7 PETER BACON: Thank you very much.

8 BENNY WAMPLER: Thank you. One other item Board

9 members. There's minutes from the June meeting. They've

10 been previously distributed. Is there any corrections?

11 MASON BRENT: Mr. Chairman, I move that we approve

12 the minutes as distributed.

13 BENNY WAMPLER: Motion for approval. Is there a

14 second?

15 DONALD RATLIFF: Second.

16 BENNY WAMPLER: Any further discussion?

17 (No audible response).

18 BENNY WAMPLER: All in favor, signify by saying yes.

19 (All members signify by saying yes).

20 BENNY WAMPLER: Opposed, say no.

21 (No audible response).

22 BENNY WAMPLER: You have approval. Mr. Wilson, do

23 you have anything else?

24

--

1 BOB WILSON: No, sir.

2 BENNY WAMPLER: This hearing is closed. Thank you.

3

4 STATE OF VIRGINIA,

5 COUNTY OF BUCHANAN, to-wit:

6 I, Sonya Michelle Brown, Court Reporter and Notary
7 Public for the State of Virginia, do hereby certify that the
8 foregoing hearing was recorded by me on a tape recording
9 machine and later transcribed under my supervision.

10 Given under my hand and seal on this the 8th day of
11 August, 2005.

12

13 NOTARY PUBLIC

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My commission expires: August 31, 2009.

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